

Exhibit A

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

CRYSTALLEX INTERNATIONAL CORP.,
Plaintiff ,
v
BOLIVARIAN REPUBLIC OF VENEZUELA,
Defendant.

MISCELLANEOUS ACTION
NO. 17-151-LPS

Wilmington, Delaware
Thursday, September 17, 2020
Telephonic Oral Argument

BEFORE: HONORABLE LEONARD P. STARK, Chief Judge

APPEARANCES:

RICHARDS LAYTON & FINGER, P.A.
BY: JEFFERY L. MOYER, ESQ., and
TYLER CRAIG, ESQ.

and

GIBSON, DUNN & CRUTCHER, LLP
BY: ROBERT L. WEIGEL, ESQ.
(New York, New York)

and

GIBSON, DUNN & CRUTCHER, LLP
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(Washington, District of Columbia)

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1 APPEARANCES: (Continued)

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15 CITGO Holding, Inc., and CITGO
16 Petroleum Corporation

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1 APPEARANCES: (Continued)

2
3 UNITED STATES DEPARTMENT OF JUSTICE
4 BY: JOSEPH J. DeMOTT, ESQ.
5 Assistant Attorney General
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6 Counsel on behalf of the United States
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19 P R O C E E D I N G S

20 (REPORTER'S NOTE: The following telephonic oral
21 argument was held remotely, beginning at 9:07 a.m.)

22 THE COURT: Good morning, everybody. This is
23 Judge Stark. I hope you can hear me.

24 If so, then tell me who is there for Crystallex,
25 please.

1 MR. MOYER: Good morning, Your Honor. It's Jeff
2 Moyer of Richards Layton on behalf of Crystallex. I have
3 with me this morning Tyler Craig from my firm and our
4 co-counsel, Miguel Estrada and Robert Weigel from Gibson
5 Dunn & Crutcher.

6 MR. ESTRADA: Good morning, Your Honor.

7 THE COURT: Good morning. And by implication,
8 it seems you can hear me and I can hear you. That's all
9 very good.

10 Who is there for the Republic of Venezuela,
11 please?

12 MR. BAYLISS: Good morning, Your Honor. Tom
13 Bayliss on behalf of the Bolivarian Republic of Venezuela.
14 It's my pleasure to introduce Don Verrilli of Munger, Tolles
15 & Olson, with Your Honor's permission will be making the
16 argument on behalf of the Republic.

17 THE COURT: Good morning; and permission
18 granted.

19 MR. VERRILLI: Good morning, Your Honor.

20 THE COURT: Good morning.

21 Who is there for any of the PDVSA or related
22 moving parties?

23 MR. NACHBAR: Good morning, Your Honor. It's
24 Kenneth --

25 MR. HIRZEL: Good morning, Your Honor. Sam

1 Hirzel on behalf of PDVSA.

2 MR. NACHBAR: And on behalf of PDV Holding,
3 Kenneth Nachbar and (inaudible) from Morris Nichols Arsht &
4 Tunnell. With us on the line is Nate Eimer of Eimer Stahl.
5 With Your Honor's permission, Mr. Eimer who will be arguing
6 on behalf of PDV Holding.

7 THE COURT: Sure. Good morning to all of you,
8 and that permission is granted as well.

9 MR. EIMER: Thank you, Your Honor. Good
10 morning.

11 THE COURT: Thank you. Good morning.
12 And is the United States on the call?

13 MR. DeMOTT: Yes. Good morning, Your Honor.
14 This is Joseph DeMott from the U.S. Department of Justice
15 representing the United States.

16 THE COURT: Okay. Good morning to you.

17 Anybody else that wants to note an appearance on
18 this proceeding?

19 MR. MORITZ: Good morning, Your Honor. This is
20 Garrett Moritz from Ross Aronstam on behalf of
21 ConocoPhillips. I'm joined on the line by Marcus Green of
22 Kobre & Kim, and Amy Wolf of Wachtel, Lipton, Rosen & Katz.

23 And as noted at the last hearing in this matter,
24 with the Court's permission, Mr. Green is available to
25 address ConocoPhillips' interest in the matter in the

1 Court's discretion on how to run the sale, and Ms. Wolf will
2 be available to address ConocoPhillips' specific
3 recommendations for running the sale.

4 Thank you, Your Honor.

5 THE COURT: Okay. Good morning to all of you.
6 And I do expect we will get to that today in that
7 ConocoPhillips will have a chance to be heard.

8 Anybody else here that wants to note an
9 appearance?

10 (Pause.)

11 THE COURT: Okay. Well, thank you all for that,
12 and thank you for arranging for what I think will be a
13 technological solution to some of the issues we ran into in
14 July when we were last together for argument.

15 Let me note for the court reporter's benefit and
16 the record that this is our case of Crystallex International
17 Corporation versus Bolivarian Republic of Venezuela. It is
18 our Miscellaneous Action 17-151-LPS, and here is how I
19 intend to use our time together this morning.

20 Given that we did order and receive supplemental
21 briefing after the July discussion, which does relate, at
22 least in part, to the motions that were argued in July, the
23 motion under Rule 60, as well as the motion to quash, I want
24 to begin by giving all of you a chance to touch briefly on
25 those motions' specific issues, and I'll have some questions

1 for you.

2 We'll hear from Crystallex first, then the
3 Republic of Venezuela, then the PDVSA and related moving
4 parties. Then I'll give the United States a chance to be
5 heard if they wish, and then a brief chance for all of you
6 to have rebuttal.

7 After that, and I promise it will happen, we
8 will move on and focus on the sale procedures on the
9 assumption that I may get to that issue in my decision tree.
10 Though I do want to hear argument and the parties' thoughts
11 on that, on that one I intend to follow basically the same
12 order. I'll hear from Crystallex, and then the Republic,
13 and any of the PDVSA related parties, then ConocoPhillips
14 will have a chance to be heard and the United States if they
15 wish, and time permitting, you all will get a chance to
16 speak again.

17 Could I ask that you put me on mute, whoever is
18 making the noise there?

19 Thank you.

20 And when we get to the sales procedures, what I
21 envision is when I call on you, it's fair game to talk about
22 all of the sales procedures that have been proposed or
23 opposed by anybody. You are not limited just to talk about
24 only what you have proposed as the case may be.

25 Again, just technical matters, if when you are

1 not speaking you can keep us on mute throughout, that will
2 be helpful.

3 Please identify yourself when you begin
4 speaking.

5 And I do remind everyone on the call that, of
6 course, this is a federal court proceeding, and it is
7 strictly prohibited to record any portion of the proceeding
8 and also strictly prohibited to broadcast any portion of
9 this proceeding.

10 So with that, let me turn the floor over
11 initially to Crystallex, principally to talk about the
12 accused relating to the pending motions of Venezuela and the
13 PDVSA and related parties.

14 Go ahead, whoever is going to cover that.

15 MR. ESTRADA: Good morning, Your Honor. Can you
16 hear me?

17 THE COURT: I can hear you and good morning,
18 Mr. Estrada.

19 MR. ESTRADA: Okay. Thank you. I was going
20 to identify myself. You know, the technology is not my
21 forte. It's a good thing I found something else to do for
22 a living.

23 This is Miguel Estrada is from Gibson Dunn. And
24 just let me sort of deal quickly with the issues that have
25 occurred after our last hearing.

1 We had briefing ostensibly on the issues raised
2 by the government's statement of interest. I would just
3 sort of make a number of brief points, and I am happy to
4 answer any other questions that remain after our last
5 hearing on all of the issues that were outstanding then.

6 Just to give you a little bit of a roadmap
7 about how Mr. Weigel, my partner and I intend to deal with
8 the issues that you may have today. I intend to address the
9 issues that were discussed last time, the motion to quash
10 and the government's arguments.

11 And Mr. Weigel will deal with the issues that
12 were intended I think mainly for this hearing having to do
13 with the procedures for the potential sale.

14 If there are any issues that come up with
15 respect to sanctions, I probably will take those as well.

16 And so I hope that that is helpful for the
17 Court, and we do apologize for foisting two lawyers on you.

18 I will sort of quickly, with respect to the
19 government's statement of interest, as I think is clear
20 from our last submission, just to hear a little bit of the
21 underbrush, didn't address at all the motion to quash that
22 had been filed; and they purported to express no interest
23 in it other than to note it has been filed and that it may
24 render mute anything else which, of course, is true, but not
25 particularly informative in the interest the government

1 might have.

2 They do not make any statement with respect to
3 the scope, the meaning, or interpretation, or anything that
4 supports any of the contentions that the Republic or PDVSA
5 has made with respect to sanctions.

6 And with respect to the questions that have been
7 raised on the legal issues, on the Rule 60(b), the post --
8 postjudgment motion, it does seem to us that our reading of
9 their post-hearing brief is that they are not, as they say,
10 taking any actual firm position; they're expressing a policy
11 view of the United States. And so they're not actually
12 embracing any of the actual legal arguments about the
13 meaning of Rule 60(b)(5) or Rule 60(b)(6).

14 For the reasons I think we have addressed in our
15 briefing and in the argument last time, we don't actually
16 think that either of these rules supports the arguments the
17 Republic is making.

18 (b)(5) for the short form reason that this is a
19 final legal judgment rather than an equitable judgment that
20 is subject to prospective effect.

21 And I think the Third Circuit cases are
22 unanimously of the view that the rule's intended for the
23 prospective effect of equity courts rather than for the
24 alternation of final legal judgments. And I can go through
25 the cases if that would be useful. I think we've covered

1 them.

2 For (b) (6), again, you know, the catch-all is
3 any other reason that justifies a relief. But the case law,
4 again, in the Third Circuit, *Budget Blinds*, *Coltec* and all
5 those cases, are very clear that the rule requires truly
6 extraordinary circumstances and a demonstration of extreme
7 unexpected hardship. But that is almost never existing when
8 the purported hardship results from the moving party's own
9 voluntary choices.

10 And nothing could be more voluntary that the
11 course of expropriation and litigation choices that have led
12 the Republic to the point where it currently is today.

13 And so I just don't think that even if either of
14 these rules were available to the Republic as an equitable
15 matter, that is to say, to a litigant just simply refuses
16 to pay a lawfully final judgment, either of them would be
17 available by its terms, but in terms of the government's
18 position, I don't read any of what the government has said
19 as addressing the tribunal requirements of either rule or
20 lending support to the Venezuela's arguments under any case
21 from the Third Circuit, or of any other circuit under the
22 meaning of either rule.

23 It is simply a statement of the policy of the
24 United States to support the Guaidó regime.

25 With respect to the latter, as I think we have

1 made clear in both our letters, we appreciate that the
2 administration has a policy of supporting Mr. Guaidó. I
3 think Congress has made it clear decades ago that questions
4 of immunity, especially with respect to judgments are
5 already final, are not to be made on an ad hoc basis.

6 All of the questions of immunity that were
7 relevant in this case have long been adjudicated and are not
8 perpetually to be reopened whenever the executive comes into
9 court to say that he would like to have a different outcome.
10 It is, after all, a final, legal judgment.

11 But in any event, even if the case were a new
12 filed -- a newly filed case -- a newly filed case, excuse
13 me, the established understanding of the FSIA is that we
14 don't do this on an ad hoc basis any more. And there is a
15 number of cases from that, and I think in *Altman* and a
16 number of other cases, the Supreme Court has told the
17 executive that these arguments are to be made to Congress,
18 not to it.

19 I think that, you know, in the main what we have
20 to say about the state in the briefing about that, I should
21 add sort of a larger, more in terms of the policy, you know,
22 we do have a policy of an independent judiciary in this
23 country, and my client has spent a decade seeking justice
24 for what an independent arbitrable panel in the courts of
25 our country have determined was a horrible injustice done to

1 it.

2 We're not a banana republic. We don't get to
3 have the executive come into independent courts to say that
4 it doesn't like the outcome of our judgments and it would
5 not like them to be enforced. And it may be that there
6 may be a corporate avenues in the context of licenses and
7 whatnot, which, you know, remain to be seen and tested, but,
8 you know, courts do not take dictation, they do not sort of
9 follow the policy of the executor, and judgments are
10 judgments and they usually follow their own courses.

11 And when the policy is actually irrelevant to
12 a legal question, I do not dispute that the views of the
13 executive warrant the respectful hearing. But there has
14 not been a demonstration that there is any policy that is
15 relevant to any legal question that remains in this case.

16 And for that reason, we do not think that the
17 intervention of the government in this case throws any light
18 that is helpful.

19 And I think that is what I have to say for the
20 time being. I am, of course, happy to answer any questions
21 that the Court may have.

22 THE COURT: Okay. I do. Thank you very much.

23 In the government's statement of interest and
24 follow-up post-hearing brief, they make reference, at least
25 at times, not just to foreign policy but to national

1 security interests. And at times, they suggest that what
2 is happening in this case may or could or will imperil or
3 implicate U.S. national security interests.

4 And I know we talked last time about the
5 government filed statements of interest in all sorts of
6 cases, and we have looked at some of those, but to the
7 extent I can find in what the government is telling me here
8 a sense of "Watch out, Court, what you do may imperil the
9 United States national security," if that is, in fact, what
10 they're saying, regardless of whether that relates to, you
11 know, a legal issue in front of me, just that sort of
12 warning, is that something that you think I should find or
13 would find in any of the other statements of interest that
14 have been presented to me?

15 And regardless of that, don't I have an
16 obligation to think carefully about what the government is
17 perhaps warning me about the implications of what I do
18 here?

19 MR. ESTRADA: Well, I think we all have an
20 obligation to take our national security seriously as
21 interest, but we also have an obligation to take skeptically
22 what the government says.

23 And I think, again, when a question is relevant
24 to a case, is perfectly appropriate to take all available
25 evidence, if necessary, under our corporate terms of

1 secrecy.

2 "National security" is a term that is very
3 easily used to cover all sorts of things. You know, the
4 government actually sort of made no specific claim with
5 respect to how the national security of our country could be
6 affected by whether or not this company is sold, or they
7 have said that specific that they would like to support the
8 public image of what we say with a little bit of irony.
9 It's basically a Potemkin foreign leader.

10 And it may be that our national interest in the
11 term -- in the sense of having some of our prestige involved
12 in backing somebody who ends up losing is involved, I think
13 that is -- that is less, you know -- that is a national
14 interest but not a question of national security.

15 In cases in which national security is at issue,
16 as I'm sure Your Honor is aware, there are established
17 mechanisms, or two questions of national security to be
18 placed before our courts.

19 There are doctrines of state secrets, there
20 are doctrines that allow the government to actually put its
21 money where its mouth is and to make a presentation to a
22 court that allows a court independently and in camera to
23 actually see what the government is saying. And to make an
24 independent judgment that this is, in fact, something that
25 warrants, you know, the type of deference that the

1 government is claiming, if the deference is even relevant to
2 the issue in the case.

3 I mean, these issues tend to come up say, for
4 example, when the government watches the Court trying to
5 prevent, you know, the publication of a manuscript. You
6 know, we had a fight over this when Mr. Bolton recently
7 tried to publish his book, and there were claims that there
8 were excerpts of classified information and whatnot that
9 could damage our national security.

10 Now, a claim like that, I suppose on the
11 surface, I think is a little bit more plausible than a
12 general allegation in a letter by a line attorney in the
13 Department of Justice saying that our national security is
14 implicated by the sale of an oil company of a deadbeat
15 debtor.

16 But on the surface of things, having a final
17 judgment in hand that is subject of the ordinary enforcement
18 of the courts, a bare-naked claim that this might implicate
19 national security is something that seems to us to be viewed
20 with skepticism and to be given no more weight in the
21 absence of some specific demonstration in accordance to the
22 usual court processes that govern these things.

23 And with an actual demonstration that the claim
24 of national security is actually germane to the issues in
25 the case.

1 THE COURT: Okay. In your most recent brief
2 filed in the month of September, I think it was at page 4,
3 you wrote, and I think this is a quote, "The government
4 refuses to reaffirm President Trump's continuing support for
5 Guaidó." That is the end of the quote.

6 What do you mean by that? Is that just a
7 summary of the newspaper articles that you have cited to
8 me, or do you have some other basis to say the government
9 is refusing to reaffirm what the president has said?

10 MR. ESTRADA: No, I'm just pointing out that
11 the president is the -- is the head of the executive branch,
12 you know. Even the attorney general just made a speech
13 yesterday saying that he has lots of line attorneys claiming
14 to know better than he. And, you know, if you have a line
15 attorney of the Department of Justice making representations
16 about what the interest of the executive branch are, I will
17 go to the horse's mouth and look at what the executive is
18 saying.

19 And, you know, I will just -- you know, I have
20 nothing other -- I meant nothing other than to say that
21 there is a little bit of divergence beginning with the
22 government disclaiming in court and what the party that
23 they actually represent, that is to say, the executive is
24 actually saying in public.

25 And that, therefore, there is some basis for

1 skepticism about the strength of what they're saying,
2 including, you know, the national interest and the
3 likelihood that the policy that they claim to be backing
4 will be one of long duration.

5 I mean, you know, in the end it doesn't really
6 matter because whether we have a change in administration or
7 whether this administration changes its own view, none of
8 these issues of, you know, a policy to buff up the image of
9 somebody who would like to become a foreign leader are truly
10 pertinent to our independent courts.

11 But my purpose in saying that was a little bit
12 of hypothetically, "Okay, I will play." You're not actually
13 right even on your own terms because you are representing
14 the executive branch, the head of which doesn't seem to be
15 singing from your own missive.

16 THE COURT: Okay. Another issue, and I know
17 we've talked about it a little bit before, but I would like
18 to make sure I fully understand Crystallex's position is,
19 you know, as of today with the motions in front of me, what
20 is the pertinent date that I look to for the alter ego
21 analysis?

22 And as I read your papers, you've set out a
23 number of different possibilities: Perhaps the date that
24 Crystallex's property was expropriated; perhaps the date
25 that your judgment was registered in court; perhaps the

1 date --

2 MR. ESTRADA: Ah --

3 THE COURT: Are you there, Mr. Estrada?

4 MR. ESTRADA: Yes, I am. Can you hear me? Or
5 are we having issues?

6 THE COURT: No, no. I can hear you. I didn't
7 know if you were interrupting or not or if you had an
8 issue.

9 MR. ESTRADA: No, no, no. No, no, no. God
10 forbid.

11 THE COURT: I was just listing some of the
12 different options for what the pertinent date might be
13 because I want to make sure I understand your position.

14 But you probably know the list. So anyway what
15 I'm interested in --

16 MR. ESTRADA: Yes.

17 THE COURT: -- what is the pertinent date?

18 MR. ESTRADA: It seems to me that the two
19 pertinent dates -- and let me see if I can understand
20 whether these two are the date that we filed our motion and
21 the day that you rule for us.

22 And the reason I say this is, is as follows:

23 We had a judgment against a judgment debtor
24 that is the Republic of Venezuela. We came into your
25 court asserting that in your District, there was property

1 belonging to Venezuela. And that assertion had to be
2 proven. We filed the motion. And that assertion had to be
3 due when you granted the motion.

4 And as a result of that, it seems to me that
5 those are the relevant dates because this was a collection
6 action in which our right to be in your court and our right
7 to try to block the property, depending on the truthfulness
8 of the assertion that at the time we came to your court and
9 at the time you restrained the property, the property
10 belonged to the debtor.

11 And it seems to me that after we established
12 that on the date of our motion and after it was still true
13 on the date you granted the motion, what may have occurred
14 afterwards, given that the point of the attachment was to
15 restrain the property so that it will not be affected by
16 later events and to keep it safe for the benefit of the
17 creditor, is somewhat relevant.

18 And, you know, once the property was attached
19 and held for the benefit of the creditor, who successfully
20 established that it belonged to the debtor, the debtor could
21 not more change the legal status of the property by changing
22 his own conduct than it could by purporting to sell it to
23 Sweden.

24 And so it seems to me that the facts with
25 respect to the expropriation and all of those things were

1 relevant to your finding historically as to whether PDVSA
2 was the alter-ego of Venezuela. But the ultimately
3 historical fact that I needed -- that we needed to establish
4 was that taken into consideration that entire history, the
5 full sweep of it, on the day we filed our motion and on the
6 day you granted it, PDVSA and Venezuela were one and the
7 same such that in seeking to collect on the judgment against
8 Venezuela, I could seize this property.

9 THE COURT: All right. Thank you for that.

10 Another -- well, so Venezuela does respond to
11 that argument by saying that the cases you rely on for
12 that being the pertinent date or dates are ones that we're
13 relying on the alter-ego doctrine to impose liability,
14 not, instead, to attach property; and you all have been
15 insistent that we're in the latter category here and not
16 the former.

17 What is your response to that distinction they
18 purport to find in the cases?

19 MR. ESTRADA: I think, you know, the distinction
20 is one that we found in the cases to fight off their claims
21 that we needed to file a separate alter-ego lawsuit. I
22 don't understand what the relevance is of that distinction.
23 You know, the distinction was relevant simply, excuse me,
24 for the proposition of whether we had to file a separate
25 lawsuit.

1 But at the -- you know, the only thing that --
2 the only thing the distinction gets you is whether in
3 establishing the alter-ego for purposes of collecting on
4 this particular property, we were establishing alter-ego
5 for purposes of this property only or establishing the
6 liability of PDVSA.

7 And where we have said from the beginning,
8 contrary to their argument, is that we were not seeking to
9 establish that PDVSA was an alter-ego for all purposes,
10 which would make us entitled to go after their assets in
11 Sweden or in Venezuela or in the Netherlands, and so the
12 distinction is one that we live with and really has nothing
13 to do with the argument that they're making now.

14 I don't even understand how they think they can
15 turn this against us.

16 Our distinction was we are making, you know,
17 the distinction between these two types of alter-egos to
18 show we're engaging in limiting -- excuse me, in a limited
19 use of it for collection purposes and not imposing a
20 liability on PDVSA for the judgment. That is -- that has
21 nothing strictly to do logically which was -- with what date
22 you pick for anything.

23 We picked the -- you know, we had to establish
24 that this was property of Venezuela when we came into your
25 court; otherwise, the motion that we filed would not be well

1 founded. And if the property had been sold in the interim,
2 I think you could not have -- you could not have properly
3 granted our motion because it was no longer property of the
4 debtor.

5 And so it seems to me those are the only two
6 dates, and whether our theory of alter-ego was limited or
7 more extensive seems to me has no relevant on which date you
8 pick.

9 THE COURT: All right. And then it seems that
10 the Republic is now maybe making a further distinction not
11 just about what the pertinent date is but also perhaps the
12 pertinent geographic location. I think they're suggesting
13 now that maybe you proved at a certain point that PDVSA was
14 the alter-ego of Venezuela; maybe in Venezuela, but not
15 necessarily in the United States. And that the alter-ego
16 determination could come out differently at different
17 physical spaces.

18 Do you understand them to be making that
19 argument? Do they cite any authority for it? And what is
20 your response to it?

21 MR. ESTRADA: I don't -- well, I mean, I
22 understand them to be making any "Hail Mary" argument that
23 will -- that they think will make them.

24 I think the version of the argument to which
25 you are alluding, Your Honor, if I am not mistaken, is that

1 since Mr. Guaidó came into office, wearing the white hat, he
2 has established what he claims to be independent governance
3 with respect to the companies that are in the United States
4 and that that is relevant somehow.

5 I don't think that that can be dissociated from
6 the temporal argument in the sense that his coming into
7 office happened after the relevant events. And so the fact
8 that he has been able to get approval in the United States,
9 which he claims is now clean as a whistle, which as we
10 pointed out in our footnote is actually not a fact in
11 evidence, it's something that has been asserted and which
12 the government in its own unique way says has no reason
13 to doubt, has no relevance because it still is not the
14 relevant date. It is a change of conduct that postdated
15 the judgment.

16 But at the time that this was all litigated, the
17 company was not segmented, there were not multiple people
18 claiming to be the President of Venezuela, and so this is a
19 distinction that has been manufactured by the intercession
20 of later events, has no legal significance on its own.

21 And I don't think it's separable from the
22 temporal distinction in the fact it is a claim that they can
23 make by dint of the fact that they came in later and tried
24 to put things in order, they say, again, by assertion, in a
25 small part of this company that they control.

1 THE COURT: Okay. Thank you very much. We'll
2 turn it over now to the Republic.

3 MR. VERRILLI: Good morning, Your Honor. This
4 is Don Verrilli; and thank you for giving us time this
5 morning to address these issues again.

6 I'd like to make a few affirmative points here
7 based on what the United States has said and what we heard
8 from Mr. Estrada this morning. And I will try to address
9 from our perspective some of Your Honor's questions and
10 then, of course, answering any questions Your Honor might
11 have.

12 First, my friend Mr. Estrada has, in the papers
13 and this morning, cast aspersion quite liberally on the
14 status of the Guaidó government on the legitimacy of the
15 actions that the Guaidó government has taken, and on the
16 relationship between the Guaidó government and the United
17 States.

18 What I would say about that, though, is that
19 they haven't introduced any evidence to support anything
20 that they have said.

21 We, on the other hand, have submitted
22 declarations that support unequivocally the legal
23 positions that we're arguing with respect to the status
24 of the Guaidó government and the steps that the Guaidó
25 government has taken to ensure that the separateness,

1 corporate separateness, has been appropriately
2 reestablished.

3 So that is the record before the Court, and
4 whatever aspersions Mr. Estrada and his client want to
5 cast on the Guaidó government, they haven't introduced any
6 evidence at all.

7 Now, the United States can speak for itself,
8 but what the United States has done, it seems to me, is to
9 verify the two key points on which our claim of
10 extraordinary circumstances under Rule 60(b) rests.

11 First, the recognition by the United States
12 that the Guaidó government is a legitimate government of
13 Venezuela. And, again, whatever aspersions my friend on the
14 other side wants to cast on that, that is an official act
15 of the United States government. And that is an act that
16 is binding on the federal courts. That when the executive
17 recognizes a foreign sovereign, that is binding; and that
18 we have cited numerous Supreme Court authority for that
19 proposition in our papers.

20 And second, with respect to the establishment of
21 corporate separateness, again, we have -- these aren't just
22 general good intentions, these are laws enacted by the
23 General Assembly of Venezuela and implemented in fact on the
24 ground in the United States with concrete steps which have
25 all been documented in our declarations.

1 So that's the record before the Court.

2 Now, what the United States has said is that
3 it agrees with us with respect to both of those changed
4 circumstances. And when the United States says it has no
5 reason to doubt what the submissions of the Republic of
6 Venezuela with respect to these changed circumstances
7 insofar as the status of PDVSA is concerned and corporate
8 separateness, the United States is not some uninformed
9 bystander. The United States has a very elaborate and
10 well-established foreign policy establishment that acts on
11 the basis of fact and gathers fact, and they would not make
12 an uninformed submission to the Court on a matter of such
13 consequence.

14 So I think the idea that it can be disparaged in
15 the way that my friend on the other side has suggested it
16 can is just wrong.

17 Now, with respect to the question before the
18 Court under Rule 60(b), what I would say is this: And,
19 again, my friend on the other side has tried to characterize
20 the position of the United States as simply a claim that
21 there are overriding foreign policy interests here that
22 dictate the result under Rule 60(b), and then he argues
23 that, well, but the whole point of enacting the FSIA was to
24 substitute law prescribed by Congress and enforced by the
25 courts for that kind of free-wheeling analysis.

1 We don't disagree with that, but the issue
2 before the Court here is whether there is an exception to
3 the statutory immunity of the FSIA for a foreign sovereign
4 and foreign instrumentality that would justify the Court's
5 exercise of jurisdiction. That's a legal question. That's
6 the legal question we're addressing in our 60(b) motion.

7 And with respect to that legal question, the
8 question before the Court is whether the combination of the
9 invocation of the enforcement of arbitrable award exception
10 and the application of *Bancec* in a manner as this Court
11 described it previously to -- in the nature of a garnishment
12 to attach the property, whether the changed circumstances
13 that we have identified bear on that judgment in such a
14 matter that it requires it to be revisited or that it ought
15 to be revisited.

16 So I think it's just quite wrong to suggest that
17 what is going on here is that the United States, with
18 respect to the question of the analysis, 60(b) analysis
19 before the Court, is asking you to substitute a generalized
20 policy judgment for a legal analysis, this is a question of
21 law. This is a question of whether this exemption to
22 immunity continues to provide a basis for a jurisdiction.

23 And that does come down, as Your Honor indicated
24 in his questions, to whether -- using the phrase that we
25 used in our last hearing -- whether the circumstances are

1 frozen in amber, either at the time that Crystallex filed
2 its suit or the time that this Court issued its ruling.

3 And Crystallex has made a very strong argument
4 that they -- strongly put argument, at least, that it has to
5 be frozen in amber, but I think the very paragraphs in the
6 Third Circuit opinion to which they pointed in their papers
7 say the opposite. You know, the paragraph -- this is at
8 page 144, the Court's opinion that we discussed at length
9 last time -- you know, it says the Court is going to follow
10 standard practice of not considering anything that isn't in
11 the record. But then says, on remand, Venezuela may direct
12 the District Court to credible arguments to expand the
13 record with later events.

14 Well, if later events were categorically
15 irrelevant as a matter of law, which is the position my
16 friend is taking before this Court, then there would have
17 been no reason for the Third Circuit to include that
18 language. It seems to me, well, that language isn't
19 dispositive of the issue before this Court by any means,
20 and we don't intend to suggest that it is, it does seem to
21 me to be quite inconsistent with the position my friend is
22 taking with respect to the nature of the property and the
23 relevant date.

24 And with respect to that, I would point out
25 that -- with respect to his answer to Your Honor's question

1 as to what the relevant date is, in terms of the status of
2 the property, I think it can't possibly be right that the
3 property -- because this Court found on the basis of the
4 alter-ego principles that a garnishment was appropriate at
5 the time, that that property is for all time and for all
6 purposes to be considered as the property of Venezuela no
7 matter what intervening events occur.

8 Because if that were the case, that would mean
9 that with respect to anything that comes before this Court
10 now or in the future, there would be no basis to consider
11 the fact that there is a different government in place, that
12 there is corporate separateness, that it is being respected,
13 as I said all of which is clearly, clearly established in
14 the record, and that just can't possibly be right.

15 Now, with respect to the national security
16 issue that Your Honor raised, I think the key point there
17 is that -- and this will bleed over a little bit into the
18 sales process argument, and if Your Honor wants to keep it
19 more tightly confined, please tell me.

20 But I think the one thing that the United States
21 has said is that the fact of establishing a sales process
22 now when there is no need to do so, because there is no
23 license to justify a sale, would have both these foreign
24 relations and national security implications, and the United
25 States has explained why.

1 And you can describe it if you want that the
2 statement of a line attorney at the Department of Justice,
3 but as Mr. Estrada knows from his long service in the
4 government and as I know from mine, that is not at all how
5 something like this occurs. A statement of interest like
6 this is vetted thoroughly and at the highest level and
7 represents the considered judgment of the United States
8 as I'm sure the United States will explain to you.

9 When the United States tell you that the step
10 like establishing a sales process could have national
11 security implications, that really needs to be taken
12 seriously. And, of course, it is self-evident why it should
13 be taken seriously.

14 They have provided a very cogent explanation
15 as to what kind of problems could ensue; that it could
16 grievously damage the credibility of the current government
17 in the eyes of the people of Venezuela, which could -- could
18 set back the progress that the United States is trying to
19 achieve along with the Guaidó government considerably.

20 That is a self-evidently serious, serious issue.
21 And frankly, if this Court were ever to use language
22 anywhere near what my friend Mr. Estrada suggested, that the
23 Guaidó government is a Potemkin leadership, that Venezuela
24 should be considered a deadbeat, imagine the foreign policy
25 and national security effects such statements would have.

1 And I realize he is engaging in vigorous
2 advocacy here, but it does point up, it seems to me, the
3 cavalier nature in which my friend on the other side is
4 treating what are very serious and grave issues.

5 So just to sum up, the record is clear. The
6 United States, we think, provides strong support for what
7 we have said about changed circumstances. We are making a
8 legal argument. The United States is not suggesting this
9 Court make a free-wheeling policy judgment. We believe the
10 legal argument needs to be made on the basis of present
11 circumstances, which are if anything, they're extraordinary
12 circumstances, it seems to me these are, and the fact
13 that we have had such extraordinary hearings with such
14 weighty issues being debated tells you that this is a
15 unique case.

16 And then with respect -- and I won't belabor
17 the point on the sales process because I know that that is
18 going to be the subject of later discussion, but it seems
19 quite clear to me that the national security interest of the
20 United States, when they tell you they're implicated by a
21 step of setting up a sales process now, I would think that
22 that really needs to be taken seriously.

23 And I'm happy to answer any questions Your Honor
24 has.

25 THE COURT: Yes, I do have some. Thank you.

1 So one thing that Crystallex wrote, this is in
2 their August 14th brief at page 12, and the argument has
3 been alluded to today, but one of the quotes here is
4 "Circumstances in Venezuela remain fluid, and the executive
5 policy views could change at any minute," by which they mean
6 the United States executive policy views could change at any
7 minute.

8 Aren't they correct that things could change in
9 Venezuela and could change here in the U.S.? And if those
10 are realities, how do I account for that possibility in
11 making a decision now?

12 MR. VERRILLI: So with respect to the
13 possibility of change, I think no one can -- no one can
14 conclusively eliminate the possibility of change. But in
15 terms of those realities, I think the -- assuming that we
16 are correct, that this analysis isn't frozen in amber, that
17 the United States Government has taken a weighty step by
18 recognizing the Guaidó government.

19 And, again, as my friend cast aspersions on
20 that, but that was an official act of the United States
21 Government, and it has very significant legal consequences.
22 It was a step -- a legal step taken by the United States,
23 and the fact that that circumstances might change in the
24 future in a way that would lead to a different legal step by
25 the United States seems to me not something that would be

1 appropriate for the Court to consider because the United
2 States has made a judgment to recognize the Guaidó
3 government, and it was considered judgment that I assume,
4 and I'm sure the United States will address this, takes into
5 account all of the factors that my friend, Mr. Estrada,
6 identified and that Your Honor's question has identified.

7 So I think with respect to that, the possibility
8 for changed circumstances, I don't think that that can
9 properly bear on the analysis given the steps that the
10 United States has taken.

11 THE COURT: All right. So in terms of the
12 pertinent date, what is the best articulation of the
13 Republic's view? Is it today? Is it the day I get my
14 decision done in this case? Is it -- and I guess relatedly,
15 why isn't it the day that we would maybe conduct a sale
16 or have a post-sale hearing to confirm the results of the
17 sale?

18 What is the pertinent date and why is it, you
19 know, why is it not just frozen at some prior time?

20 MR. VERRILLI: What I think, Your Honor, and the
21 right way I think to think about that is when the Court
22 renders its judgment on the Rule 60(b) motion, the judgment
23 should be rendered based on the facts and circumstances that
24 exist when that -- when the Court enters judgment.

25 The point of Rule 60(b), of course, is to allow

1 for reconsideration of final judgments in extraordinary
2 circumstances. And I think we have amply demonstrated that
3 these are extraordinary circumstances and that it would be
4 at that period.

5 Now, I suppose if something dramatic happened
6 after the Court entered judgment, there would be some
7 possibility that that would need to be revisited. But I do
8 think as a matter of law, it would be when the Court enters
9 its rulings on the 60(b) that that is the right temporal
10 frame of reference here.

11 THE COURT: All right. And then what about this
12 sense I got from your papers that perhaps in addition to a
13 question of what is the pertinent date, maybe I'm being
14 asked to decide what is the pertinent geographic location
15 for the alter-ego inquiry, is that a different argument from
16 the date argument; and if so, do you have any authority for
17 it?

18 MR. VERRILLI: So we, we view that -- the reason
19 we made that point, Your Honor, was to refute the argument
20 being made by my friends on the other side; that because of
21 the situation on the ground in Venezuela, no credence should
22 be given to the legitimacy of the corporate separateness
23 that has been enacted and implemented -- has been enacted
24 by the legislature and implemented in the United States.

25 And our point is whether or not the actions of

1 the general assembly have been sufficiently implemented in
2 Venezuela itself, they have undisputedly, and the record is
3 100 percent clear on this, been implemented and respected in
4 the United States and therefore the general argument that
5 they are making about conditions in Venezuela being a basis
6 for disregarding the corporate separateness that has been
7 created in the United States are incorrect.

8 So it was offered as not so much as the need to
9 make a separate argument about geographic scope as to refute
10 their argument as to why the Court shouldn't consider the
11 separateness.

12 THE COURT: Okay. Thank you very much.

13 We will come back to you, I'm sure, at a certain
14 point.

15 But let me turn now to PDVSA and those parties.

16 Is there anything you want to add based on the
17 new filings or what you have heard this morning?

18 MR. EIMER: Your Honor, good morning. It's Nate
19 Eimer.

20 I don't think we have anything to add on the
21 Rule 60(b) motion. If Your Honor has any questions on the
22 Rule 69 motion, I'd be glad to answer those.

23 THE COURT: No, I don't have any questions at
24 this point.

25 Nothing to add on your own on that?

1 MR. EIMER: Your Honor, no, nothing new because
2 the United States didn't really address the motion to quash.

3 The only thing that I might want to clarify,
4 because some of our discussion, I think, was somewhat
5 interrupted by the difficulty we had on the phone, is that I
6 think the very clear issue, and Your Honor raised this
7 question with me I think as we were first interrupted, as
8 to whether Your Honor had already decided the issue of
9 rule -- essentially the Rule 69 issue when it decided the
10 FSIA question, and whether or not there had been
11 respectively a collateral estoppel on that.

12 And I think that is where we were first
13 interrupted. So if I may come back to that.

14 I think the Third Circuit opinion and Your
15 Honor's opinion were very clear that what you are deciding
16 was the FSIA question. That question is very much separate
17 from the Rule 69 issue that we raised in our motion. The
18 Rule 69 -- Rule 69 makes it very clear that the state law
19 has to apply in determining the ownership of the property or
20 the propriety of attachment.

21 Delaware law actually takes a two-step approach
22 to ownership of property which is the hallmark under
23 Section 324 of the Delaware Code.

24 The only property that can be attached or the
25 only stock that can be attached is stock in which the debtor

1 is the owner. PDVSA -- I'm sorry, Crystallex has been very
2 clear throughout this proceeding, and was clear again today
3 in Mr. Estrada's comments, that they have never sought to
4 make PDVSA liable under the underlying judgment. Their
5 claim was only that the stock of PDV Holding belonged to the
6 Republic. And as such, the question of ownership of stock
7 had never been litigated before this Court. This Court
8 never decided that question.

9 In fact, PDVSA made clear in trying to avoid
10 that litigation that the question of the propriety of the
11 attachment was something that should be litigated later,
12 and that the only issue the Court should decide was the FSIA
13 question, which is what the Court did decide.

14 The resolution of the FSIA question under *Bancec*
15 is not the same as the resolution of the ownership of
16 Delaware stock under Delaware law. That is a two-step
17 analysis.

18 The first step is alter-ego. And whether or not
19 the *Bancec* analysis is the same alter-ego analysis of the
20 Delaware law analysis, we passed by. We didn't really argue
21 that.

22 But the second step, really the Court actually
23 wound up deciding it in our favor and against Crystallex
24 because the Court decided that there was no fraud.

25 And the second step really is a requirement that

1 the alter-ego be used as an instrumentality to create -- to
2 commit a fraud. And that never happened in this case. The
3 Court found that that never happened.

4 And so as a result, the attachment itself does
5 not comply with Delaware law because the owner of this
6 property is PDVSA, and there is no basis under Delaware law
7 for piercing the veil to get to PDVSA because that -- those
8 two entities were never used to commit a fraud in using the
9 instrumentality.

10 The only case that Crystallex cited to say that
11 there, in fact, was compliance with Delaware law was
12 Magistrate Burke's decision in the *Harrison* case. But they
13 truncated Magistrate Burke's analysis because they say,
14 well, there was some in justice here because PDVSA wound up
15 with some of the stock at some point -- I'm sorry, with some
16 of the ownership of the gold mine at some point. But that
17 is not what Magistrate Burke said in his opinion.

18 He said: "Delaware law requires that the
19 fraud or injustice be found in the defendant's use of the
20 corporate form itself." And that is not what happened here
21 at all. There is no allegation. In fact, this Court found
22 that there was no form of fraud in the use of a corporate
23 forum.

24 So we think to the extent there is any estoppel
25 here, it really goes against Crystallex because this Court

1 already resolved the fraud question, and therefore now
2 litigating for the first time the Rule 69 issue, we think
3 the motion to quash should have been granted.

4 THE COURT: All right. I think one of their
5 arguments is that this issue either was raised or could have
6 been raised in some of the earlier litigation that predated
7 today.

8 Isn't it true that you could have raised it?
9 And if so, why is that not dispositive?

10 MR. EIMER: It's not dispositive because, first
11 of all, it wasn't raised, and PDVSA had every right not to
12 raise it. And that is the reason that it had an immediate
13 right to appeal the FSIA question which is exactly what it
14 did once the Court ruled on FSIA.

15 That was the question that was appealed, and it
16 never litigated further the question of the propriety under
17 Rule 69 of the attachment.

18 And so that was not part of the litigation
19 before this Court, nor was it required to be part of the
20 litigation before this Court.

21 THE COURT: All right. Thank you, Mr. Eimer.

22 Were you speaking for all of the moving parties
23 on the motion to quash just now?

24 MR. EIMER: I believe so.

25 THE COURT: Okay. All right. Well, then, let

1 me turn to the government and see what, if anything, you
2 might like to add.

3 MR. DeMOTT: Thank you, Your Honor. Can you
4 hear me?

5 THE COURT: Yes, I can hear you. Thank you.

6 MR. DeMOTT: I don't do much to add on the Rule
7 60(B) motion, Your Honor, but I do want to respond to a few
8 things Mr. Estrada said.

9 First, there is no merit to his suggestion that
10 the executive branch is improperly interfering with the
11 judiciary or somehow undermining public confidence in the
12 courts.

13 To be clear, the United States is not asking the
14 Court to grant the Rule 60(B) motion out of deference to
15 U.S. foreign policy concerns. Rather, as Mr. Verrilli
16 explained, the United States' filings verify two key factual
17 points underlying Venezuela's argument.

18 First, the executive branch has recognized that
19 the Guaidó regime is the legitimate government of Venezuela,
20 and that's binding on U.S. courts as the cases cite in our
21 brief indicate.

22 And second, as a result of dramatically changed
23 circumstances over the past two years since this Court's
24 August 2018 alter-ego decision, fundamental premises
25 underlying that prior ruling no longer hold true.

1 There is nothing remotely inappropriate about
2 the United States weighing in on those points in response to
3 this Court's express invitation.

4 I also want to push back against Mr. Estrada's
5 suggestion that the statement of interest and the
6 supplemental brief reflect the views of DOJ line attorneys
7 rather than the considered views of the United States.

8 The filings are authorized and signed by the
9 acting assistant attorney general for the civil division.
10 They are not expressing my personal views or the views of
11 my colleague, Mr. Borson, who signs the briefs, and its
12 special representative Elliott Abrams, who has said the
13 situation in Venezuela is worrying for U.S. national
14 security in his letter to this Court, which is Exhibit 2 to
15 our statement of interest.

16 As Special Representative Abrams letter details,
17 a forced sale of PDVSA shares could grievously damage the
18 credibility of the legitimate Guaidó government which could
19 have serious implications for U.S. national security.

20 And so, you know, there is no merit whatsoever
21 to the idea that this is line attorneys going out on a
22 whim.

23 Finally, and this goes more to the proposed
24 steps toward a sale, but I want to mention it here in
25 response to what Mr. Estrada said, Crystallex is totally

1 wrong to ask the Court to second guess the expressed foreign
2 policy views of the United States.

3 Crystallex's filings speculate that Guaidó's
4 claim to power is weakening, and that the United States
5 might withdraw its recognition of his government, and
6 Mr. Estrada continued to speculate about that this morning.

7 But there is no authority for the notion that
8 courts are supposed to independently evaluate the
9 persuasiveness of the government's foreign policy,
10 particularly on the basis of news articles curated by the
11 plaintiff and speculation by plaintiff's counsel.

12 Crystallex may not agree with the foreign policy
13 judgment set forth in the letter by Special Representative
14 Abrams, but those judgments reflect the position of the
15 United States Government and are therefore are entitled to
16 deference.

17 I think that is all I have on the 60(b) point
18 for now, unless Your Honor has any questions of the United
19 States.

20 THE COURT: I do have some questions. Thank
21 you.

22 So as you noted probably from my questioning,
23 I have noticed a distinction in some of the language the
24 government has used throughout its filings. And I am
25 grateful to the government, as you indicated, I have been

1 inviting the government to provide its views for some
2 time, and I was grateful you all appeared just before the
3 last hearing and have continued to do so.

4 But I assume you have chosen your language
5 carefully, and that it's the result of the vetting process
6 that you described a little bit ago.

7 So I want to make sure I understand.

8 Does the government mean something different
9 when it says "foreign policy interests" and when it says
10 "national security interest"? And relatedly, sometimes
11 you say that one or both of these interests would be
12 "needlessly imperiled"; other times you say they "could be
13 imperiled." Sometimes you say it seems to me that "they are
14 imperiled."

15 And it may be that you didn't intend any
16 distinctions here. And it may be that if you did intend
17 distinctions, that they don't really make a difference to
18 anything I have to decide. But I really do want to make
19 sure I don't misunderstand what the government's view is.

20 So if you could help me on that, that would be
21 great.

22 MR. DeMOTT: Absolutely, Your Honor.

23 And I would direct you to the letter from
24 Special Representative Abrams. You know, he repeatedly
25 mentions foreign policy. He also mentions U.S. national

1 security at the bottom of the first page. And I think
2 there is a distinction between those two ideas, although,
3 you know, perhaps some concerns overlap in some ways.

4 I think that the letter is very clear and
5 we'll likely get into this more in the second part of this
6 morning's hearing, but I think the letter is very clear that
7 the steps Crystallex is proposing toward a potential forced
8 sale, any of those steps are of concern to the United States
9 interests here.

10 And I would just direct you to Special
11 Representative Abrams letter for the details of that.

12 You know, he, he mentions that, "Taking" -- and
13 this is on the top of the final page of his letter. He
14 mentions that "Taking immediate steps toward a conditional
15 sale of PDVSA's U.S.-based assets, including PDVH and Citgo
16 would be detrimental to U.S. policy and the interim
17 government's priorities."

18 And so, you know, I would just direct you to his
19 letter, I think, for the specifics.

20 THE COURT: Okay. Well, I guess it raises in my
21 mind a question of if national security, by which I think
22 you want me to understand national security of the United
23 States, if the national security of the United States is
24 implicated by what I might do, help me understand better why
25 it is that the government did wait so long to make its views

1 known in this case.

2 MR. DeMOTT: Sure, Your Honor.

3 Well, I think the United States was watching
4 this case very closely and obviously there is a rapidly
5 evolving situation on the ground in Venezuela. There are a
6 number of different competing government interests at stake.

7 And so, you know, it took some time to see first
8 whether the Supreme Court was going to weigh in; and then,
9 you know, we wanted to see the parties' briefs and make sure
10 we developed -- you know, it went through the full process
11 of developing the statement of interest, you know, getting
12 input from all interested components of the government.

13 You know, I don't want to overstate the
14 potential -- the potential risks for U.S. national security,
15 but, you know, that is mentioned in the Abrams letter. And
16 I think the, the potential foreign policy implications of
17 moving forward are what the government is primarily
18 concerned about, and potential national security
19 implications of a sale.

20 THE COURT: All right. And I suppose this
21 question may lead more into the sales process, but let me
22 just ask you:

23 Are you going to be able to shed any light on
24 the status of Crystallex's OFAC application when, if at all,
25 we may expect a decision on it?

1 And regardless of the interest to those, why
2 should I not come to the conclusion that the United States
3 interest that you are here to express will be adequately
4 preserved and protected through the OFAC process, and
5 therefore maybe I don't need to really weigh or evaluate
6 them in connection with the issues I have to decide?

7 MR. DeMOTT: Well, Your Honor, I think they
8 will. I mean, the OFAC process is certainly the backstop
9 for protecting U.S. interest. And as stated in our filings,
10 the government's primary request here is that the courts
11 refrain temporarily from authorizing the potentially
12 damaging prefatory steps that Crystallex has proposed.

13 As for how long OFAC anticipates needing to
14 adjudicate the license, it is very difficult to say because
15 there are so many factors that go into the decision.

16 As indicated in the letter from Andrea Gacki,
17 the director of OFAC, which is Exhibit 2 to our statement of
18 interests, these include the rapidly involving political and
19 economic situation in Venezuela, developments in the
20 U.S.-Venezuela sanctions regime, other license applications
21 that implicate the PDVH shares, you know, potentially this
22 Court's resolution of the pending motions to dissolve the
23 writ, which, as noted, you know, could moot -- could moot
24 some issues, and the legal claims of other creditors against
25 Venezuela arising from the corruption of the Chavez and

1 Maduro regimes.

2 As Your Honor may be aware, the United States
3 filed a statement of interest last night in a case in the
4 Southern District of New York involving the PDVSA 2020
5 bondholders' litigation.

6 So there is just a lot -- a lot of different
7 things that go into the decision. And as Director Gacki
8 indicates in her letter, there is an interagency review
9 process that is currently underway, but, unfortunately, I'm
10 not -- I'm not really in a position to provide a firm
11 timeline.

12 THE COURT: Okay. Thank you very much for that.

13 Let's just briefly run through and give you each
14 a chance to add anything further on these issues before I
15 move on to more of a focus on the sales process.

16 Mr. Estrada.

17 MR. ESTRADA: Yes, Your Honor. Yes, Your Honor.
18 Thank you again. This is Miguel Estrada.

19 I have, as is probably evidence from my
20 interaction, a great deal of affection and respect for
21 counsel for the Republic, Mr. Verrilli. He and I have known
22 each other for decades.

23 But I think I can fairly summarize his frozen in
24 amber argument, it can't possibly be that I'm wrong. And I
25 think that is what we call a bootstrap argument.

1 I haven't really heard any actual logical
2 explanation to how it is that once the Court restrains the
3 property for the benefit of the creditor, the purported
4 conduct of the debtor afterwards that supposedly changed
5 everything is different from their purportedly selling the
6 property to Sweden.

7 And so that we're all clear, there is no logical
8 basis for the Republic to identify any subsequent dates
9 other than the convenience of the Republic in seeking to
10 avoid the payment of a lawful judgment.

11 When you asked Mr. Verrilli the question as to
12 what the date was, his answer was sort of illuminating. He
13 said, "When I filed my motion."

14 If that is not entitled convenience, I don't
15 know what it is.

16 I would applaud that the date was when we sought
17 to restrain, you know, the property, and we contend that it
18 was, you know, the property of the debtor.

19 Counsel for the Republic also said that, you
20 know, there is a legal question here. There is a question
21 of sovereign immunity. I think we should have lose, lose
22 sight of the fact that this is not a new case just being
23 filed on the Court's civil docket. There is a final
24 judgment. So the question of sovereign immunity has been
25 litigated to a fair-the-well all the way to the Supreme

1 Court, and litigation in which, you know, the Republic
2 failed to get a single win along the way.

3 Rule 60(b) in either of the subsections the
4 Republic has invoked does not permit the relitigation of
5 purely legal issues that have been adjudicated and final
6 judgments. That is what the *Coke vs. Virgin Islands* has
7 said.

8 I would also like to highlight for your
9 attention, you know, the comfort case from the Third
10 Circuit -- I mean, the First Circuit, excuse me, is
11 basically *Comfort, C-o-m-f-o-r-t, vs. Lynn School Committee*,
12 which is an en banc ruling from the First Circuit, which
13 is -- which makes this point in a very compelling way.

14 You know, the First Circuit had ruled on one of
15 the school desegregation cases on a question that was
16 adverse to one of the parties.

17 Shortly thereafter, you know, the Supreme Court
18 issued, you know, the ruling in *Parents United* would seem to
19 contradict what the First Circuit had done.

20 And then somebody brought up 60(b) motion
21 saying, well, you can't do that because the Supreme Court
22 just said you can't do this.

23 And the First Circuit interpretation of
24 Rule 60(b) is like, look, you cannot get around res judicata
25 by trying endlessly questions that had been adjudicated.

1 So your arguments are very interesting, but we don't keep
2 playing litigation of the same legal question until the
3 losing party wins. This is not what Rule 60(b) is for.

4 With respect to the government's contentions, I
5 want to be clear that I don't mean to disparage Mr. Guaidó.
6 I wish him, you know, the very best. Our contention is
7 actually very different, which is, we have never disputed
8 and we accept today that our government has recognized, and
9 as the lawful President of Venezuela, nor have we disputed
10 that to the extent it is relevant to anything in this case,
11 you have to accept them as the President of Venezuela.

12 That means, for example, that if Nicolás Maduro
13 and Guaidó are both trying to file brief in your court, you
14 have to take that Guaidó as the government of Venezuela.
15 But it doesn't mean anything else.

16 It doesn't make things fall off course, it
17 doesn't change historical facts, it doesn't, you know,
18 revive final judgments.

19 It doesn't sort of change what our laws are
20 either.

21 It is only a recognition that he is the lawful
22 ruler of a foreign country, in that country.

23 It doesn't rule our country.

24 There is this question as to what the government
25 has backed, you know, Venezuela on. What Venezuela has

1 brought is still a motion that is controlled by two rules:
2 60(b)(5) and 60(b)(6).

3 We have explained at great length while the case
4 law under each of these rules does not backup what Venezuela
5 is arguing for, and I'm going to repeat that, I haven't
6 heard any articulation citing any case from this circuit or
7 any other circuit that explains how the language of either
8 rule actually can be used to realize the two purported
9 facts cited by the government to undo a final judgment
10 that has gone all the way to the Supreme Court and has cert
11 denied.

12 And finally, on these questions, you asked the
13 question about national security. And I just want to make
14 it clear to follow-up on my earlier answer, that I think
15 what we heard is confirmation of the proposition that
16 national security, as used in the representations of the
17 government here, is basically a stock phrase that has been
18 used for effect in this case.

19 You know, you were basically told to look at the
20 Abrams letter, and there is not any elaboration, any more
21 factual detail other than, we think our interests are served
22 by continuing to back Mr. Guaidó.

23 Now, with respect to the statements that we made
24 about the situation of Venezuela, all we have pointed out to
25 you is that President Trump, whether people like it or not,

1 is the head of the executive branch, and he has said certain
2 things about what he thinks about the situation in
3 Venezuela. I don't doubt that Mr. Abrams is a high
4 official. You know, Mr. Bolton was, too.

5 And I think before a federal court puts its
6 processes on hold on the representation of an incumbent
7 administration, that it is current policy to do something,
8 it has to search for an actual legal basis to do that. And
9 it also has to consider whether this is a policy that is
10 well grounded or anything or it might change; especially
11 with respect to litigation that has been ongoing for a
12 decade, and in which one of the parties has done an
13 injustice that cries out for a resolution.

14 With respect to the national, you know, security
15 question, too, and with respect to the pending motion, I
16 will say again what should be obvious. You know, the Guaidó
17 government has the backing of the U.S. Government and has
18 access to funds from the U.S. companies. All of these
19 questions could be avoided if Venezuela would comply with
20 the lawful judgments of our courts. They continue to be
21 in front of our courts trying to evade payment of our
22 judgments.

23 I continue to fail to see how they're entitled
24 to any sympathy or to help from any equitable arm of the
25 courts. They could pay the judgment and none of these

1 issues would arise. And they have control Citgo and the
2 U.S. assets of PDVSA, and they could pay the judgment.

3 They simply do not want to pay, and they want
4 our courts to aid them in evading our judgments. I just
5 don't see how that is a good legal argument.

6 I will speak briefly to what Mr. Eimer said. I
7 don't think those issues that were significantly covered.

8 I think that there is a question that was not
9 fully answered with respect to why they didn't raise these
10 issues. I think as a practical matter, there is already,
11 you know, the law of the case that established that these
12 questions are governed by the FSIA and they lost on them.

13 Rule 69 governs the process of the writs that
14 we have to issue, but I don't think even they would contend
15 under Rule 69 be would be entitled to conduct a judicial
16 sale without complying with the FSIA or just go to the
17 marshals and sell the thing on the courthouse steps.

18 Regardless, they were supposed to raise all of
19 these arguments when they were fighting, you know, the
20 issuance of the writ.

21 There is something that I think I should remind
22 the Court that I want to get into it. Because I know
23 Mr. Eimer is not personally responsible, but his client,
24 PDVSA is very much responsible.

25 Throughout the course of the pendency of the

1 litigation, counsel for PDVSA, which was then doing the
2 bidding of the Maduro administration and then turned its
3 coats to serve the Guaidó administration, repeatedly made,
4 you know, representations to the Court that are flat out
5 inconsistent with the arguments now made out in the motion
6 to quash.

7 And, you know, PDVSA has tried its best to say
8 that they never, you know, represented that the writ would
9 be eternal, sort of like love, but the fact is I can refer
10 the courts to the record. They affirmatively, factually
11 represented, in order to dispense with the bond, that the
12 writ was effectual to give us security, and that we would
13 have recourse to the shares to sell. And that was what
14 would justify our getting a bond during the pendency of the
15 appeal.

16 And all of the arguments they made on the motion
17 to quash are flat out inconsistent with the arguments we
18 made in the motion to quash in which they were successful.

19 They are completely estopped from these
20 arguments, and I expect that, you know, the reason why all
21 of the counsel who made these arguments were disappeared
22 from the docket in advance of our last hearing is because
23 they were not very well disposed to answer the uncomfortable
24 questions I would ask if I were a federal court judge who
25 had been made all of these, you know, representations and

1 had the same party show up in front of me with the audacity
2 to make the statements they are making now.

3 THE COURT: Okay. Thank you very much,
4 Mr. Estrada.

5 Mr. Verrilli.

6 MR. VERRILLI: Thank you, Your Honor. A few
7 points.

8 First, with respect to the legal issue before
9 the Court, I think the source of the dispute here traces
10 back to the fact that Crystallex took the position before
11 this Court previously that it was not invoking the alter-ego
12 theory to hold PDVSA liable for the -- for the actions of
13 Venezuela, but that it was solely seeking to garnish
14 particular property.

15 And so that, that -- and it seems to me really
16 what we're experiencing now is that, that Crystallex is
17 seeking to treat that judgment, that garnishment, as though
18 it were a judgment that PDVSA is liable as alter-ego for the
19 actions of Venezuela. But it isn't and it wasn't.

20 And because it was a garnishment which was
21 dependent on the status of the property as a result of the
22 alter-ego analysis that occurred back when that judgment was
23 rendered, that's the only basis for the attachment; is that
24 it was garnishment based on a conclusion that it was -- that
25 it was -- that should be deemed the property of Venezuela.

1 Well, this Court -- and that is what provides
2 the basis, the jurisdiction, for overcoming the FSIA
3 immunity that would otherwise attach here.

4 Well, this Court is being asked to exercise
5 its authority now to take certain steps, to order a sales
6 process and eventually to order a sale. Those are further
7 orders of the Court that depend on a conclusion that -- that
8 taking those steps is consistent with the FSIA and its grant
9 of immunity because the -- because the exception continues
10 to apply.

11 But given that the exception is dependent
12 entirely on the claim that the property ought to be treated
13 as the property of Venezuela, it seems to us the fact that
14 the circumstances have changed as dramatically as they have
15 in a manner that bears directly on the question of whose
16 property this is, it isn't just a change of government, it's
17 the fact that the new government has enacted laws that
18 require corporate separateness and that those laws have been
19 implemented.

20 Those are undisputed facts.

21 And the suggestion that they -- that this Court
22 can ignore those facts and continue to exercise its
23 jurisdiction under the FSIA seems to me to be just quite
24 wrong.

25 That is not me saying so. That's the

1 consequence of the decision that they made to approach this
2 in the manner that they did. And that's what raises the
3 question.

4 Now, just a couple of other points here.

5 With respect to the question of the national
6 security interest of the United States, you know, my friend
7 Mr. Estrada is giving them the back of the hand. The
8 government did address this some, but I would -- I don't
9 want to burn up all the Court's time by reading it, but if
10 one looks at the third paragraph of Mr. Abrams' letter, this
11 isn't boilerplate. This is specific.

12 "Five million refugees destabilizing surrounding
13 countries. The Maduro regime's relationship with Russia,
14 China, and most recently Iran gives those hostile nations a
15 foothold in the Western Hemisphere that they wouldn't
16 otherwise have, and that those include military and
17 intelligent aspect that make them even more worrying for
18 U.S. national security."

19 That is not boilerplate. That is concrete
20 fact-specific statements about the risk to U.S. national
21 security.

22 And then finally, with respect to this question
23 about Venezuela and what the Republic is trying to do here,
24 we have acknowledged again and again, in our papers and in
25 the argument previously before this Court, that we -- that

1 Venezuela is responsible to pay the judgment to Crystallex.
2 But Crystallex is pretending as though that's the only
3 judgment, that's the only potential liability that Venezuela
4 faces, and that Venezuela simply is a deadbeat because it is
5 trying to avoid paying that judgment.

6 What we are trying to do is to deal with a
7 situation that poses enormous pressure on the regime because
8 there are numerous judgments and trying to manage that
9 process effectively in a way that respects our obligations
10 to pay these judgments but does so in a manner that allows
11 for the survival of the Republic's assets and interest is
12 perfectly legitimate.

13 And characterizing it in the way my friend has
14 it seems to me is completely inappropriate, and I will stop
15 with that.

16 Thank you.

17 THE COURT: All right. Just one question.

18 In your August brief, page 3, maybe page 11
19 also, the Republic stated something to the effect of "OFAC
20 is unlikely to grant Crystallex a license."

21 Is the Republic telling me something different
22 or in addition to what I am hearing from the United States?
23 Do you have some information that would back up your view
24 that OFAC is unlikely to grant the license?

25 MR. VERRILLI: No, nothing. No information

1 other than it was before the court already.

2 But we are particularly thinking -- referring
3 there, Your Honor, to the paragraph, penultimate paragraph
4 on page 2 of the Treasury Department's letter, which was
5 included in the government's statement of interest, where it
6 seems to us Treasury is indicating that it takes very
7 seriously the point that "Any action or sale of PDVH's
8 shares at this time would undermine current U.S. foreign
9 policy interest on Venezuela and absent a change in the
10 above considerations, those factors will weigh heavily
11 in OFAC's license determination and could prove to be
12 dispositive in adjudicating its license application."

13 So it was that language we were focused on in
14 making those statements in our brief, and this Court will,
15 obviously, make its own judgment about what the United
16 States is saying here, but that seems to me to be, you know,
17 neon lights -- the government seems to me to be saying in
18 neon lights that it has great doubts about the wisdom of
19 issuing a license any time soon.

20 THE COURT: Okay. Thank you very much.

21 Mr. Eimer, anything you wanted to add?

22 (Pause.)

23 THE COURT: Mr. Eimer, are you there?

24 MR. EIMER: Yes, Your Honor. I was still muted.

25 I'd just like to make --

1 THE COURT: Go ahead.

2 MR. EIMER: Yes, I'm sorry.

3 I'd like to make just two points.

4 Mr. Estrada at the end of his remarks was
5 referring to what we previously discussed as judicial
6 estoppel. And if Your Honor will recall that in the motion
7 to quash, there were two arguments made.

8 One, that Rule 69 required the attachment to be
9 quashed;

10 And the other, the fact that PDV Holding was not
11 in possession of certificates also required the attachment
12 to be quashed.

13 Your Honor asked Mr. Estrada at the last hearing
14 whether his argument about judicial estoppel based on
15 representations made by PDVSA applied to both arguments.

16 And on page 94 and 95 of the transcript,
17 Mr. Estrada was very clear that this argument that he raised
18 this morning did not apply to the Rule 69 argument but only
19 applied to the Section 324 argument about PDV Holding not
20 being in possession of the stock.

21 So I think that argument is really of no force
22 with respect to the Rule 69 argument that has already been
23 conceded by Mr. Estrada.

24 I'd like to talk a little bit more about the
25 judicial -- the collateral estoppel argument that he made,

1 and cite the Court back to your August opinion on page 425
2 where the Court talks about "next steps," and expressly
3 quotes Crystallex in terms of the next steps.

4 And Crystallex representing to the Court that
5 PDVSA, as well as perhaps PDVH -- meaning PDV Holding -- and
6 Venezuela, they have the right to come back in and challenge
7 the writ."

8 Noting further from Crystallex, in Your Honor's
9 opinion, that "PDVSA may, of course, seek to challenge the
10 writ on non-jurisdictional grounds by a motion to quash
11 brought after the writ was issued and before the Court
12 allows the execution process to commence."

13 And that is exactly what is happening here.

14 PDVSA and now PDVH and Citgo have come back to
15 the Court challenging the writ on non-jurisdictional
16 grounds, something that has not been resolved by this Court.

17 And I might note that PDV Holding and Citgo were
18 not parties to the proceeding at that time. In fact, Citgo
19 tried to intervene long afterwards in PTV Holding just
20 recently.

21 So neither -- my two clients weren't even
22 parties to the proceedings at that point. So I don't see
23 how they could be estopped.

24 And PDVSA exclusively was advised that they
25 could come back and challenge the writ on non-jurisdictional

1 grounds, which is exactly what it is doing here.

2 And that is all I have, Your Honor.

3 THE COURT: Okay. Thank you very much.

4 Mr. DeMott, anything you want to add?

5 MR. DeMOTT: Nothing under the Rule 60(b)
6 motion, Your Honor.

7 THE COURT: Okay. Thank you.

8 Well, let's move on at long last to a little
9 more focused on the sale procedures.

10 We'll hear from Crystallex first on that, and I
11 believe it will be Mr. Weigel.

12 MR. WEIGEL: Yes, Your Honor. Thank you.

13 Can you hear me?

14 THE COURT: I can, yes. Good morning.

15 MR. WEIGEL: Good morning.

16 We are proposing, in terms of the sales process,
17 what we think is a very straightforward process.

18 Section 324, the corporate code, tells the Court
19 how one sells shares of stock. It's a public sale. You
20 advertise in a newspaper, twice. You also do -- the last
21 publication has to be ten days before the -- before the
22 proposed sale date.

23 And the Delaware Supreme Court in the *Deibler*
24 case made it quite clear that: Following the procedures set
25 forth in subchapter 5 of chapter 49 and title 10, that it

1 affords due process to judgment of debtors while being
2 reasonably efficient from the public point of view.

3 And what we're asking, Your Honor, is simply to
4 follow the standard procedure in Delaware for selling stock.
5 And we recognize that this is a lot of stock or an important
6 asset.

7 But the courts have been quite clear that it is
8 important to follow the statutory procedures. Not only
9 *Deibler* and Delaware Supreme Court, but the U.S. Supreme
10 Court in the *BFP* case have recognized that when you follow
11 the established state law procedures for selling an asset,
12 you get reasonably equivalent value; recognizing, of course,
13 that it's a forced sale and that a forced sale yields a
14 different price than if the parties had not been required to
15 sell.

16 But I would like to point out, of course, that
17 at no point in time is Venezuela required to allow us to
18 sell. They can pay our judgment at any point in time up
19 until the date the gavel comes down on the sale and we go
20 away.

21 So this is really in their hands. If they pay
22 us off, if they pay the judgment that they owe that has been
23 adjudicated, and they have no possible excuse for not paying
24 it, then we don't have a sale.

25 But assuming they're not going to do that, the

1 *Deibler* case makes it quite clear that even in *Deibler*, it
2 was skeletal notice. Basically all that was done was --
3 said that they're going to sell X number of shares of the
4 XYZ corporation without any explanation of what that company
5 did.

6 And even in that circumstance, the Delaware
7 Supreme Court held that that was due process and would not
8 upset the sale.

9 We're, of course, not proposing anything like
10 that. We are proposing to give supplemental advertisements
11 in the Wall Street Journal and Oil and Gas. And obviously,
12 as Your Honor is well aware, everything that this Court
13 does in this action is reported in the financial press, and
14 I would imagine that very shortly after Your Honor issues
15 whatever order you issue in this matter, that it will be in
16 all the major financial publications.

17 But we are proposing to pay for supplemental
18 advertising. We have proposed to give supplemental notice
19 to 32 major companies that our financial advisor has advised
20 us might be interested.

21 We're also proposing to set up a dataroom, and
22 there already is substantial public information that's out
23 there about the value of these companies.

24 Just this spring, in the middle of COVID,
25 Citgo raised over \$1.25 billion in an offering that was

1 oversubscribed. And we have that offering circular. It
2 contains up-to-date financial information as of that time.

3 And according to their own press release, it was
4 significantly oversubscribed and from a broad and diverse
5 group of investors. In their press release they go on to
6 say, "Our ability to raise additional funds at attractive
7 pricing despite the unprecedented economic environment
8 surrounding COVID and global oil supplies demonstrates the
9 market's overall confidence in Citgo."

10 So there is going to be a fair sale. The
11 statute requires that we sell only as many shares as
12 necessary to satisfy our judgment.

13 And what we propose is that the Court have the
14 marshals start out offering 10 percent of the shares. And
15 if somebody bids the full amount of our judgment to -- for
16 that 10 percent of the shares, that's absolutely terrific.
17 And we can repeat that all the way up until if nobody is
18 willing to bid the full amount of our judgment, for less
19 than 100 percent of the shares, then we would propose
20 that the marshal then conduct an ordinary auction of the
21 100 percent of the shares to get the best price possible
22 which will then be credited against our judgment.

23 We have some very practical aspects that we
24 think makes sense.

25 One is that we should, in light of COVID, and

1 this is something that has come up in various UCC shares
2 in New York, we should allow for participation by Internet
3 so that people don't have to travel to Delaware if they're
4 interested but are not inclined to take the health risk.

5 We think there should be a \$10 million good
6 faith deposit that would, of course, be refundable to
7 everybody but the winning bidder.

8 And that is just to discourage people who are
9 not legitimate bidders but would seek to disrupt the
10 process.

11 We also think that the winning bidders should be
12 allowed, at their option, to have six months to get whatever
13 regulatory approvals they would like, but we would suggest
14 that they be required to place down a nonrefundable good
15 faith deposit of 10 percent of their bid or \$50 million,
16 whichever is less, to ensure that somebody doesn't come in
17 and just simply take a free option. In other words, win the
18 bid and then wait six months, see how it plays out, and if
19 they -- if oil prices move against them, that that they
20 would walk away from the deal.

21 So we would like to make sure that the winning
22 bidder does have an incentive to go forward.

23 We would propose that we -- the Court give them
24 six months to get their regulatory approval subject to
25 renewal by the Court if there is good cause to do that.

1 If, in fact, the winning bidder does not get
2 regulatory approval, we would propose that the marshals
3 offer the deal to the second-highest bidder. And if they
4 are unprepared to go forward, that the marshals
5 re-auction -- conduct a re-auction.

6 There has been some assertion that we're
7 trying to get some sort of a bargain here or we're trying to
8 gain control of Citgo. Nothing could be farther from the
9 truth.

10 We have no interest in owning an oil company or
11 running an oil company. If we had to take control of the
12 company, if we had to be the winning bidder in order to
13 protect the value of our judgment, we would do it. But it
14 is far less than preferable. We would hire competent people
15 to run it.

16 But what we would like most of all is simply to
17 get paid. And, again, at any point in time in this process,
18 up until the gavel comes down, Venezuela can pay us off and
19 stop the whole process.

20 Conoco proposes that we do this with a receiver,
21 but that's really -- when you read their arguments, you can
22 see it is sort of jury-rigged and they're trying to
23 extrapolate from various cases that maybe a receiver could
24 be appointed here and so forth.

25 But, you know, as Wright and Miller says, "The

1 appointment of a receiver is considered to be an extra-
2 ordinary remedy that should be employed with the upmost
3 caution and granted only in cases of clear necessity to
4 protect plaintiff's interest in the property."

5 Here, the Supreme Court, the Delaware Supreme
6 Court, has already held that the procedures that are set
7 forth in the Delaware Code for doing this -- and they
8 include not only the advertisement that is in 324 but there
9 are also other requirements in 49 -- Section 4972 requiring
10 posting. And they might seem somewhat archaic, one has to
11 post five times around the area and so forth, but these are
12 the procedures that the legislature has set forth.

13 They're -- you know, as the Delaware court
14 noted, there is the interest of getting a fair price, but
15 there is also the interest of public convenience. The
16 notion the marshals are -- should not be put in the
17 possession to evaluate competing bids because that's not
18 really within their bailiwick. It should simply be an
19 auction. Which is -- this is a large auction, but it is a
20 pretty straightforward one.

21 And there is really no possibility that we
22 will steal this asset as people keep accusing us of. If
23 Venezuela is right, and that the asset is worth far more
24 than our judgment, and in fact that somebody is going to
25 not require 100 percent of the shares, then we will be

1 out -- we will be outbid and we will be paid off, and only
2 a portion of Citgo will be sold. Or PDV -- the shares of
3 PDVH.

4 Conoco claims that their interest will be
5 protected by a receiver, but Conoco is a huge company. It
6 has \$32.5 billion in revenue last year, with a "B."

7 In *Deibler*, the Supreme Court says that, you
8 know, if somebody through poverty can't advertise or --
9 because *Deibler* really puts the burden on the judgment
10 debtor; that the judgment debtor is the party with the
11 information, the judgment debtor is the party that can get
12 it cheaply.

13 But here also Conoco can advertise. Nothing
14 prevents Conoco -- they criticize the 32 companies we
15 picked. Well, they can pick the next 32. It's really quite
16 simple for them to do that.

17 They can do whatever supplemental advertising
18 they want. And they can outbid us on the sale. Because if
19 truly they come behind us, as they assert, and I have no
20 reason to doubt it, everything above our judgment in value
21 will go to them.

22 So they can outbid us at the sale, and they can
23 own Citgo, and we would be very happy for that.

24 So we think the best course of the Court is to
25 follow the standard Delaware procedure that has been

1 approved by the Delaware Supreme Court, supplemented by
2 whatever advertisement -- well, by advertisement we propose,
3 and whatever else -- additional advertisements and whatever
4 additional processes that Conoco or Venezuela or anyone else
5 wants to do. There is nothing that prevents anybody who
6 wants to from hiring an investment banker and beating the
7 bushes to find new potential purchasers.

8 I don't think there's any possible chance that
9 everybody who possibly would be interested in this company
10 will not know about the sale very shortly after Your Honor
11 rules.

12 But there is one point that I would like to
13 make here because as Your Honor -- as Your Honor knows, we
14 have been told over and over again that we didn't need a
15 bond and they didn't have to post the bond for the stays
16 because our -- we were well protected and that we had a
17 lien.

18 Now, there is a problem, however, in that
19 Delaware Code, 10 Delaware Code 1581, has a three-year
20 limit in it for the value of our lien. And because of the
21 extensive stays that have been requested, by Venezuela, we
22 are now within sight of that.

23 This Court issued its ruling and the marshals
24 served the -- served the writ, it was either late August or
25 early September, two years ago. And while we think -- we

1 believe that this Court's order staying the action worked to
2 effectuate a stay of that three-year period. And that even
3 if they didn't, that that Court has the equitable power to
4 stay that period.

5 And there's additional writs that we can -- we
6 can move for that we believe extend the period.

7 So we think it is extendible.

8 But we're also certain, as this hearing has
9 pointed out, that the issue will be extensively litigated,
10 and then will be taken up on appeal, and we will start this
11 cycle again.

12 So what we would propose is that we really want
13 to get this done before it becomes an issue.

14 And there just is not a lot of law on this. As
15 Your Honor knows, the ordinary course would be that we would
16 get a bond if they get a stay during appeal. And when we
17 won, we won in the Supreme Court, we would just collect
18 against the bond and we would all be done.

19 But because of the representations that were
20 made by the other side, that we were adequately secured
21 and adequately protected, we don't have a bond here. And
22 there is just not a lot of Delaware case law dealing with
23 extending the three-year period because it just doesn't
24 come up very often.

25 So while we believe that Your Honor has

1 effectively done that, and certainly can do it, it's going
2 to involve an enormous amount of judicial resources to
3 resolve the issue if we come up against it.

4 And given that, we do think that any prospective
5 purchaser will want time to get their own regulatory
6 approval. It's not something we raised, you know, when
7 Your Honor first issued it because we had three years, and
8 it's not something we raised last November when we were in
9 front of you because we still had two years. But now we
10 have, you know, pretty much ten months.

11 And what we would ask the Court to do is to
12 set a target sale date of the week of January 11th at the
13 Court's convenience and the marshals' convenience, and that
14 we would ask that the Court schedule a hearing some time
15 later this fall where we can bring the Court up to date.

16 But we -- Your Honor has already ruled in
17 your -- in your May order that there are no regulations or
18 orders that prohibit the Court from moving forward and
19 determining how the shares will be sold.

20 And you also agreed with our statement that
21 preparing for a sale now will help maximize the value of
22 PDVH and its subsidiary while reducing the prejudice that
23 unnecessary delay will cause to Crystallex.

24 So we would ask at this point in time that we
25 actually do move forward here.

1 We recognize that OFAC is an issue, and we will
2 have to deal with that, but hopefully if Your Honor sets a
3 target date, then we will be able to go to OFAC and say, you
4 know, please decide our motion -- I mean, our request for a
5 license.

6 And we think that is the way that will protect
7 Crystallex, which has vigorously litigated this case, and
8 no one can certainly accuse us of not being diligent, and
9 it will also protect the public's confidence in the court
10 system. That after we have gone through an arbitration,
11 we've gone through a process in this Court, we've gone
12 through the Third Circuit and indeed all the way up to the
13 Supreme Court, that at this point in time, that should not
14 all be negated by the passage of time that was at no fault
15 of ours.

16 So to reiterate, Your Honor, we think Your Honor
17 should follow the procedures set forth in Delaware Code.

18 We think it should be done with whatever
19 supplemental advertising that anybody wants to do. We
20 propose certain supplemental advertising.

21 We propose setting the dataroom, and there is
22 no reason we can't do that now and get that information
23 together. Venezuela can put into that dataroom any
24 information that they think is relevant and will help
25 maximize the value of the company.

1 And we can get going with this process so that
2 all of the -- all of the litigation, all of the Court's
3 efforts, all the Third Circuit's efforts are not for naught.

4 Thank you.

5 THE COURT: Thank you. I do have some questions
6 for you.

7 So in terms of the other procedures that are
8 proposed by some of the others on the phone, it seems to
9 me, but I want to make sure I understand it correctly,
10 Crystallex's position is you don't want the Court to order
11 any of those, but you also are not asking me to preclude
12 anyone from taking some of those steps, you know, that a
13 private party could take.

14 Do I understand that correctly?

15 MR. WEIGEL: Yes. Absolutely.

16 You know, the Court in *Deibler* (long e) --
17 or *Deibler* (long I) says, "Judgment debtors are free to
18 supplement such motions as notice as the sheriff may
19 disseminate. As the owner of the property, they not
20 only have the economic interest rationally to extend the
21 appropriate level of resources and notice, but also have
22 the fullest and cheapest access to the relevant information.

23 "Thus, a relevant allegation of cost and burden
24 to this process, as well as the flexible requirements of
25 due process of law, certainly can take into account and rely

1 upon this superior active of information and superior
2 incentives of judgment debtors."

3 So yes, we would be -- we welcome. I mean, we
4 genuinely want to get the highest price for these benefits,
5 and we would welcome whatever additional advertisement
6 people want.

7 We welcome anybody hiring investment bankers if
8 they want to do that.

9 We support Venezuela or Citgo or putting
10 whatever information they want to put into a dataroom.

11 What we don't support is delaying this process
12 while PDVSA chooses to sell it by itself because its had
13 plenty of opportunity to do that. I mean, we won our
14 judgment back in 2017. It was affirmed by the D.C. Circuit
15 in February of 2019.

16 Your Honor's order in December of 2019 told
17 Venezuela that if the Supreme Court didn't disturb the Third
18 Circuit's ruling, then you were going to proceed to cause
19 the sale. "If the Supreme Court proceeding do not alter a
20 Third Circuit's instruction to this Court, the Court intends
21 to proceed to selling those shares."

22 That Mr. Verrilli is a skilled advocate is
23 undisputable, but they had to have known at that point in
24 time that the odds of the Supreme Court taking cert are
25 just not that great because that's just -- that's just the

1 numbers. And they certainly knew by May of this year that
2 the Supreme Court had denied cert.

3 So if they wanted to sell the -- some or all
4 of the assets, they could do so. And if they could find a
5 buyer, and that buyer will pay money to -- enough money to
6 get our judgment satisfied, God bless, they can do it. And
7 they can do it at any point in time up until the sale
8 happens. But they have no real interest in selling this.

9 And so unless this Court, you know -- and
10 just as they have no interest in paying our judgment.

11 So this is a forced sale. I mean, there is
12 no -- and a forced sale doesn't yield the same amount of
13 money necessarily as a sale that's -- has a willing,
14 uncompelled seller.

15 But that's just a function of the fact that they
16 haven't paid their judgment.

17 THE COURT: Okay. So if they did want to sell,
18 and you keep reiterating that they could, is it your view
19 that they would need an OFAC license to do so?

20 MR. WEIGEL: I suspect they would need an OFAC
21 license to effectuate a sale.

22 But if the sale was -- if the sale was going to
23 pay us off, we would certainly support it. It's not at all
24 clear whether OFAC would oppose that. I mean, I would think
25 that they would be very happy to have a resolution of this

1 matter.

2 THE COURT: Right. Okay.

3 But it at least raises some uncertainty and
4 possible delay. You are not suggesting they could tomorrow
5 just go ahead with a sale and then pay you off; right?

6 MR. WEIGEL: No. No. Absolutely not, Your
7 Honor.

8 I'm saying that they've had since 2017 to
9 anticipate and deal with this. And even if they had some
10 hope that they would get overturned on appeal, they've had
11 since early 2019 to try and deal about this issue, and they
12 have made no steps to do it; and they really have no
13 interest in doing so. But --

14 THE COURT: Okay. Yes. I got that. I have a
15 bunch of questions for you so let's try to -- we'll try to
16 move them through a little quickly.

17 What, if anything, can you tell me about where
18 you are with respect to your OFAC license application? Is
19 there -- is there anything you can say about the progress or
20 the delay there?

21 MR. WEIGEL: We know -- we filed it, as Your
22 Honor is aware, and we, we continue to wait. We do not know
23 anything about the process. They have not given us any
24 indication of when they're going to rule.

25 THE COURT: Okay. There was a statement in one

1 of your briefs that it could happen any day. That's just
2 speculation; right? You don't know that.

3 MR. WEIGEL: Right. As Your Honor knows, Connor
4 Capital did get a license very early in this process, and
5 that took two months. And this has been pending for much
6 longer than that. But we don't know.

7 THE COURT: There is a suggestion in a number of
8 the briefs, maybe including yours, that if you are unhappy
9 with the OFAC decision whenever it ultimately comes, there
10 are steps you could take, I think to litigate it, some sort
11 of probably APA challenge or something, but is that your
12 view? That OFAC may not be the last word here whenever we
13 hear from them?

14 MR. WEIGEL: Well, Your Honor, we have not fully
15 explored what our options will be if OFAC turns us down, but
16 we obviously will consider them if, if they do. We're
17 hopeful that they will allow the sale.

18 If not, you know, if there is a taking of our
19 property, then we will figure out the appropriate way of
20 dealing with that.

21 THE COURT: All right. In terms of the
22 discretion that I have to supplement the procedures set
23 out in the Delaware statute as recognized by the Delaware
24 Supreme Court, I, I think I now fully understand if I have
25 such discretion, you would prefer that I not exercise it

1 other than to just not prohibit some of these other steps
2 that other interested parties might take.

3 Do you actually dispute that I would have the
4 discretion to, for instance, appoint a receiver or a Special
5 Master or some sort of expert to help me and help the
6 marshals and more generally, do you dispute that I have the
7 discretion to do any of the things that anyone else here has
8 proposed I consider doing?

9 MR. WEIGEL: Well, I think that encompasses a
10 bunch of things.

11 We do oppose simply leaving it in the hands of
12 Venezuela and allowing them to voluntarily try and sell it
13 without any prospect of a -- of a judicial sale under 324.

14 In terms of appointing a Special Master, yes,
15 the Court could certainly do that if that made the Court
16 feel comfortable and we would not oppose that.

17 We think a receivership is not really the right
18 vehicle here because it would -- you know, it -- typically a
19 receiver takes control of the company and has certain
20 obligations of the Court which would effectively leave the
21 Court running Citgo for a period of time.

22 We don't think that that is appropriate. We do
23 thing that a Special Master would help aid the process,
24 would be perfectly fine.

25 THE COURT: All right. And in terms -- there

1 is some dispute about whether this is ultimately an
2 execution sale or a judicial sale. Did your answer turn at
3 all on whether this is an execution sale or a judicial sale?
4 That is, is my discretion different under one regime than
5 another?

6 MR. WEIGEL: I don't believe so, Your Honor.
7 I've always thought of those two terms as synonymous.

8 It is most definitely an execution sale because
9 we have a judgment. There are other cons -- other -- there
10 are other situations where someone can -- where a court can
11 sell an asset that is not subject to judgment.

12 So this an execution sale, but I don't know that
13 it -- absent sort of a bankruptcy-type situation, which I do
14 believe is completely different, I'm, I'm not sure there is
15 an enormous difference between the two.

16 THE COURT: Okay. One of your criticisms of
17 Conoco's suggestion of a receiver, and it may apply even to
18 a Special Master, you can help me understand what your view
19 is, but the concern that you raised is that I, I might find
20 myself where the receiver or the other individual decided to
21 subordinate Crystallex's interest to the level of unsecured
22 interest or presumably to any level, I'm not quite sure why
23 one would follow from the other.

24 If I do appoint a Special Master, even a
25 receiver, couldn't I just direct them that the priority

1 issue is already resolved or that they -- maybe I need a
2 recommendation on the priority issue?

3 Does the subordination of your interest
4 necessarily follow from me taking steps to appoint the
5 receiver or the like?

6 MR. WEIGEL: No. I think Your Honor can
7 certainly make it clear we are not subordinated and we --
8 if you choose to do that, I think we would ask that you do
9 that.

10 We think that that is essentially what was
11 argued all the way up to, you know, in the Third -- before
12 this Court and then the Third Circuit.

13 And the priority rules are pretty clear. We
14 certainly don't want to have a whole another litigation and
15 create -- you know, and have a whole another dispute with a
16 receiver or somebody about this issue and then have to come
17 back to this Court and spend even further judicial
18 resources.

19 So I, I -- we would -- if Your Honor chooses to
20 do that, we think that -- we think you should specify that.
21 But a Special Master to simply aid the Court in setting up a
22 dataroom and making sure that notices go out to, you know,
23 relevant people and so forth, we don't have an objection to
24 that as long as it doesn't delay the process enormously.

25 THE COURT: Okay. There was a reference to some

1 discovery requests you had made. Has that been proceeding?
2 Is that anything that you anticipate ripening into a dispute
3 I might have to be concerned with?

4 MR. WEIGEL: Well, Your Honor, because I think
5 Your Honor -- what we would ask the Court simply is that --
6 you know, Venezuela itself has said that it has the best
7 access to the information, and that is certainly the point
8 that the Delaware Supreme Court made in *Deibler*.

9 When we set up a dataroom, we would ask that the
10 Court order them to put the information that they think is
11 relevant in that dataroom by a date certain. We would
12 suggest perhaps, you know, within a month.

13 We have discovery requests we could serve them
14 on them, but I think that, as the Court in *Deibler* points
15 out, they have the incentive to make information available.
16 And so -- I mean, if they flat out refuse to provide
17 information, we do have subpoena power, but it's really
18 their job, as the Court made clear, to provide whatever
19 supplemental information they think will help maximize the
20 value. And since they have it and they have the incentive
21 to do it, we expect they're just going to provide it.

22 THE COURT: Okay. And then on the three-year
23 issue, which have you raised now, if -- let's just play out
24 from your perspective, you know, maybe not worst case but a
25 bad scenario, let's just say time moves on and for whatever

1 reason we get past three years and there is -- it turns out
2 there is no way to extend or protect you in any other way.

3 Would you be able to move for a writ of
4 attachment again? I recognize we spent a lot of time
5 talking about what would be the pertinent date and all that,
6 but just as a matter of Delaware law, is there anything to
7 stop you from, you know, moving for a writ of attachment
8 again?

9 MR. WEIGEL: Your Honor, I have not -- I don't
10 think we have contemplated getting to that point for several
11 reasons.

12 One is that we think that your tolling probably
13 tolls that statute. Certainly it has been no fault of ours
14 in terms of trying to move this thing forward that we are at
15 the place we're at.

16 I believe the three-year rule was put in there
17 to ensure that secured creditors are diligent in pursuing
18 things, and we certainly have done that.

19 We also think that equitable tolling would
20 apply. That if what you have already done is not
21 sufficient, we believe that Your Honor could toll that
22 statute, and we certainly will make a motion to do that if
23 we start to get close.

24 Finally, there is another writ, and it's
25 essentially a writ of sale. It doesn't -- I -- it's --

1 it doesn't have a fancy name like FSIA, but that we will
2 understand will extend the period while the sale is -- in
3 other words, it's an order directing the marshal or the
4 sheriff to conduct the sale.

5 So we think that those processes can extend the
6 lien.

7 If, in fact, all of those processes are
8 exhausted and are unsuccessful, then we would certainly
9 contemplate whether we could do -- we could file another
10 attachment. But there are issues with that, and priority is
11 determined by when we filed.

12 So we, we're diligent. We did get our
13 attachment. And we, we think that if they're allowed to
14 undo that after all of the Court process we have gone
15 through, it would make a mockery of our judicial system.

16 THE COURT: Okay. Thank you very much.

17 I want to turn now to the Venezuela parties.
18 How many folks should I expect to hear from on behalf of
19 Venezuela, PDVSA, et cetera?

20 MR. EIMER: Your Honor, it's Nate Eimer. I
21 think I will be the spokesperson for this side of the
22 argument.

23 THE COURT: Okay. Great.

24 Go ahead then, please.

25 MR. EIMER: Okay. Thank you, Your Honor.

1 I think one thing Mr. Weigel didn't address and
2 seemed to assume is there can be some sort of a sale.

3 If there is one thing that is undisputed in this
4 case in its long history, there's not much that has been
5 undisputed, is that Crystallex doesn't have a license, there
6 is no indication if or when it will have a license, and no
7 sale can occur until it has a license.

8 So it seems to us that the exercise that
9 Mr. Weigel wants to put us through now is a fruitless
10 exercise-designed sale process that might never occur, and
11 that might very well be inappropriate at the time any sale
12 is to occur because of changed circumstances.

13 Whether or not OFAC regulations prevent doing
14 the things that Mr. Weigel has proposed, and I think several
15 of the things, such as setting a sale date, is probably
16 precluded by OFAC regulations, if not everything he has
17 asked for.

18 The Court certainly has discretion as to whether
19 it wants to take the step now of designing a hypothetical
20 sale process for a sale that may never happen.

21 And I think in exercising that discretion, the
22 Court first, I think, needs to look at whether it needs to
23 defer to the United States' position that nothing worse
24 should happen.

25 I will leave the United States to address that.

1 But at least the Court needs to balance the
2 interest of the party here, and I think we probably can
3 group them into three.

4 There is the United States' stated position.

5 There is the Venezuela position.

6 And there's Crystallex.

7 And, in fact, here the United States has taken
8 the extraordinary position that moving forward now, even
9 with the steps that had been proposed, the more limited
10 steps that were much more limited until today, the more
11 limited steps that Crystallex proposed in its brief would
12 cause harm to foreign policy and national security
13 interests.

14 And those interests were aligned with the
15 interest that the government of Venezuela presented. And
16 I know Mr. Estrada likes to talk about the Guaidó
17 administration as the Potemkin government, but in this
18 country, it is the government of Venezuela and it is
19 entitled to the respect of foreign sovereign that might --
20 its position might be more successful in a court in Caracas
21 right now but not in this court.

22 And the position of the government of Venezuela
23 that it would cause injury to the government to go forward
24 even with these prefatory steps has been supported by
25 Ambassador Abrams in his very clear statement.

1 And I think his statement has been reflected
2 already in the discussion that Mr. Verrilli gave the Court
3 and repeated by the United States in its statement of
4 interest.

5 The prefatory steps that Crystallex proposes
6 implicate significant U.S. foreign policy and national
7 security interests that are rightly before the executive
8 branch in conjunction with Crystallex's license
9 application.

10 And I might answer a question Your Honor posed
11 earlier with respect to whether or not the OFAC process duly
12 protects the interest of the United States, and it clearly
13 does not because Crystallex wants to move forward before
14 that process even takes effect and before the United States
15 has an opportunity to make a decision.

16 And the United States has advised the Court that
17 the prefatory steps that Crystallex proposes now in and
18 itself, before the license application is decided, injure
19 U.S. foreign policy and national security.

20 And so the licensing process does not fully
21 protect the interests of the United States.

22 So I, I don't see how, given that position of
23 the United States and the government of Venezuela, balance
24 against the interest of Crystallex. This Court can move
25 forward because Crystallex can really point to no harm to

1 it from waiting -- from waiting until there is a license.
2 Nothing is changing. There is no indication that it's going
3 to be harmed in any way. It hasn't given this Court any
4 indication on how it could be harmed.

5 The question of whether the three years expires
6 or not, I think, Your Honor has addressed that adequately.
7 But the three years may well expire without anything
8 happening because of the license application.

9 And so I agree with Crystallex that probably the
10 stay protects them on that.

11 But that is not -- that is not going to be
12 solved by putting these procedures into place. That's
13 solved by when the license is granted, and there is no
14 indication the license is going to be granted.

15 OFAC, I think, in a response to a question by
16 the Court, advised Your Honor that taking the steps that
17 Crystallex has proposed towards an auction doesn't in any
18 way facilitate OFAC issuing a license. OFAC doesn't need to
19 know what the procedures are for the sale of the stock, if
20 it ever is to occur.

21 And so there is no point from OFAC's point of
22 view in establishing these procedures. So OFAC is yet
23 another party who has indicated there is no point in going
24 forward with this process.

25 And so we're left really with only, on the other

1 side, Crystallex; and Crystallex, without any enunciated
2 harm that could come to it in not having these procedures
3 put in place.

4 So let me turn briefly to the procedures that
5 they've proposed because they're wholly inadequate for this.

6 Now today they seem to have changed and say they
7 want to incorporate, or are willing to incorporate anybody's
8 procedures into the process. And that was good to hear
9 because the procedures that they proposed are wholly
10 inadequate.

11 I might also point out that I agree that in the
12 *Deibler* case, the *Deibler* case gives this Court great
13 latitude in putting procedures in place that expressly says
14 that sale of closely -- stock in a closely-held company is
15 co plicated and requires Court attention.

16 And it does put the burden of the sale on the
17 debtor which is exactly what the debtor here has said.

18 It's true Venezuela or PDVSA -- neither PDVSA
19 or Venezuela have gone out and tried to sell the stock.
20 But why would it? It has been resisting even today the
21 propriety of selling the PDVH stock to satisfy Crystallex 's
22 debt.

23 And until that is resolved, there would be no
24 reason for them to go out and satisfy the debt because they
25 don't believe that it is appropriate for that stock to be

1 used to satisfy the obligation of Venezuela.

2 Once that is determined, if it's determined
3 adversely, then as the *Deibler* court found, and as
4 Mr. Weigel has said, and as we've said, then those parties,
5 the debtor, whoever is going to do it, has every incentive
6 to make the process work, to minimize the amount of stock
7 that it sold, and to maximize the effectiveness of the sale.

8 And so there is no reason to move forward at
9 this time. But if the Court does want to structure that,
10 it's structured in the process in mind with the debtor being
11 the focus.

12 I might also note that the assumption seems to
13 be that Delaware law requires that the marshals sell the
14 stock.

15 But actually, that is not quite accurate.

16 I might point out to the Court that title 10,
17 chapter 49, subchapter 5 of the Delaware Code sets out
18 procedures for an execution sale. And Section 4975 refers
19 to the "officer conducting the sale as a sheriff, constable,
20 or other person."

21 And so it appears that under Delaware law,
22 anyone can conduct the sale. Anyone appointed by the Court.

23 So I would think that that could reasonably
24 happen.

25 In response to the Court's questions about the

1 receiver, first of all, a receiver is inappropriate under
2 Delaware law because PDVSA is not insolvent. That would be
3 a requirement under Section 291 of the code.

4 But it would also violate OFAC regulations. Any
5 transfer is -- under Section 31 CFR 591-407 is defined also
6 as the "appointment of any agent, trustee, or fiduciary for
7 the conduct of the sale."

8 And that is in 591.310.

9 So I don't believe the Court has the authority
10 without a license to appoint a receiver at this point or any
11 agent to sell the stock. And so I think that is unavailing
12 as well since there is no license for that either.

13 So in sum, I think our position, Your Honor, is
14 that there is no purpose at this point designing a sale
15 process.

16 The United States, through the statement of
17 interest, has indicated that it would cause injury to the
18 national security and the foreign policy interest of the
19 United States.

20 The government of Venezuela has asked the Court
21 not to do it because it would cause injury to its standing
22 in Venezuela.

23 And Crystallex basically can say nothing as to
24 what would happen to it in the interim.

25 And no sale can occur so I would think in

1 exercising its discretion, which the Court apparently has, I
2 think the Court should do so clearly weighing the interest
3 in favor of, at this point, standing down until there is a
4 license.

5 Thank you.

6 THE COURT: Thank you, Mr. Eimer. I have some
7 questions for you.

8 I guess starting on this three-year point and
9 the Delaware statute that Crystallex has now drawn my
10 attention to.

11 You said I think in passing that you probably
12 agree that the time for that has been tolled at various
13 times by the stay orders.

14 Is that something -- I don't know if you are
15 prepared to speak to it, but is that something that any of
16 your clients or the Republic might be willing to stipulate
17 to?

18 I think you can appreciate the situation for me
19 is you are arguing there is no harm. But if, in fact, ten
20 months from now is an important date, that potentially does
21 create harm plus some urgency to this case that may or may
22 not otherwise be viewed as existing.

23 So anything you can say on that at this point?

24 MR. EIMER: That issue is new to me this
25 morning, Your Honor. I haven't heard that before.

1 I think we have all assumed that the
2 effectiveness of the attachment, if it were valid, would
3 continue until there was some resolution.

4 I, of course, always want to check with the
5 client, but at this point I don't see any reason we would
6 object to continuing effectiveness of the attachment in
7 light -- in spite of the three-year statute, and would
8 suggest that as Mr. Weigel has suggested to the Court, that
9 the stay the Court -- the stays that the Court had entered
10 were effective.

11 THE COURT: Okay. And I'm sure you recognize,
12 this discussion is all -- for principally for my benefit if
13 I do reach these issues. I have not made a decision on the
14 issues that were argued this morning and the motions.

15 But if I were to reach these issues, address
16 the argument that PDVSA and the other parties on your side,
17 you do have an incentive to maximize the value recovered at
18 a sale and to limit the number of shares sold that -- I
19 mean, that seems to me, and it seems to me correct, and
20 therefore if that is a correct statement of your incentive,
21 why would the procedure proposed by Crystallex, which could
22 be supplemented by whatever additional procedures you might
23 all want to undertake, why wouldn't that be most likely to
24 lead to a fair outcome here?

25 MR. EIMER: Well, a couple things.

1 As I understood Mr. Weigel today, he really
2 has no procedure that -- he is essentially suggesting some
3 minimum procedure that can be expanded to whatever the
4 parties think are required.

5 If that is the case, that's fine. Because then
6 there are no procedures that he is requiring that the Court
7 is going to dictate are the limit. And so long as it is not
8 the limit, that's fine.

9 I do think, and I was surprised to hear that
10 Mr. Weigel wants a January sale date even if there could be
11 a sale, I do think this is a complicated process. I know
12 Your Honor would be familiar with the sales -- I think it's
13 very clear there -- we can't at least, and so no one else
14 has, been able to find any kind of execution sale like this,
15 certainly not in the district.

16 We've talked to the Marshal's Office, we've
17 talked actually to the Sheriff's Office, and I had forgotten
18 it was a couple hundred thousand dollars was the most
19 anybody has ever sold in a sale like this.

20 But there is some sort of precedent in this in
21 Bankruptcy Court as Your Honor, I'm sure, is familiar with.

22 And these sales are not done in three months.

23 So my biggest concern with what my friend has
24 said this morning is that kind of a time limit on this
25 process. This is the sale of shares in an enormously

1 complex enterprise which is going to require onsite
2 inspection of the assets, discussions with management,
3 interviews with employees, and maybe one or two rounds of
4 bidders.

5 I'm not saying this is going to stretch out
6 forever, but if you set a schedule today, I'm certain it
7 can't be done in 90 days. So I do have a serious concern
8 about the time limit that you proposed.

9 But in terms of having an open-ended process,
10 that can be supplement in any way because we do have the
11 incentive to maximize value, yes.

12 Another complicating fact here is it is fairly
13 clear to me, based on the valuations I have seen, that if
14 there's ever a sale, it is going to be a minority interest,
15 which is going to involve rather complex negotiations of
16 minority rights in any stock that is sold. That will
17 clearly involve extended negotiations between -- I don't
18 know what "extended" means, and I don't want to imply to
19 the Court we're trying to put this off forever. I know the
20 Court is impatient with me already probably, but I think
21 in order to do this in a way that the Court would be
22 satisfied, those steps will have to be taken.

23 THE COURT: All right. This dispute between
24 whether it is an execution sale or judicial sale, is that
25 something that if I were to reach these issues I need to

1 resolve from your perspective?

2 MR. EIMER: No. I think Conoco raised those in
3 order to work its way around to getting away from a sale by
4 the marshal into having a sale by a receiver.

5 I think no matter how Your Honor looks at it --
6 and I don't think you are ever going to want to put the
7 marshal in charge of this sale. I think that's unfair to
8 the Marshal's Office and I think an impossible situation
9 here, given the size and complexity of this sale if it ever
10 were to go forward.

11 THE COURT: Do you have any --

12 MR. EIMER: That is my answer.

13 THE COURT: Right. Go ahead. Did I interrupt
14 you?

15 MR. EIMER: No, I'm sorry. I was just repeating
16 my answer was no, because I didn't want to get lost.

17 THE COURT: Okay. In terms of a Special
18 Master to assist me and whoever, do you have any objection
19 to that?

20 MR. EIMER: I think it depends on what the role
21 of the Special Master is.

22 I think the interest of the debtor in making
23 sure the sale goes forward and in conducting the
24 negotiations over the sale documents, I think so long as
25 that is in the hands of the debtor and not a Special Master,

1 no, I don't have a problem with that.

2 If the role of the -- so long as the role of the
3 Special Master is to facilitate the Court's oversight of the
4 process, then no. I view that as just another judicial
5 officer which, of course, I expect will happen.

6 THE COURT: All right. And then there has been
7 repeated suggestion, I'm quite sure you heard it, that
8 you -- you could just turn around and sell some portion of
9 the company at any point to pay your debt.

10 I hear you that, you know, you have the motion
11 pending that were argued again this morning.

12 If we just put that aside for the moment, do you
13 agree it is correct if that day arrives or those motions
14 were done with, that one option your side has here, I guess,
15 with an OFAC license, if you can get it, is to sell some of
16 the company and pay off the debt and be done with it.

17 MR. EIMER: I think that the OFAC issue has got
18 to be overcome. I assume, if all of these motions that are
19 currently pending are resolved adversely to the -- to this
20 side, I would think, then, essentially it's the same outcome
21 as having the execution sale. Right? And effectively there
22 is a debt, the Court is ordering us to pay the debt, and the
23 question is, how is it going to get paid? And from these
24 assets.

25 So I don't -- I don't see that as being anything

1 different than going through the process the Court has
2 already been ordered.

3 THE COURT: Okay. Yes. Thank you very much.

4 Okay. Well, let me turn to ConocoPhillips to
5 say what you would like to say.

6 MR. GREEN: Hi. Yes, this is Marcus Green from
7 Kobre & Kim on behalf of ConocoPhillips.

8 You know, I think the Court's initial
9 introduction this morning about -- introduction this morning
10 about --

11 THE COURT: Mr. Green, is that you speaking
12 still?

13 MR. GREEN: Yes.

14 THE COURT: There is some interference.

15 Mr. Green, I'm not able to understand you.

16 MR. GREEN: Yes.

17 THE COURT: "Mr. Green, I'm not able to
18 understand you."

19 Try again.

20 MR. GREEN: Judge Stark, is this better?

21 "Judge Stark, is this better?"

22 THE COURT: I'm sorry. Did you say something?

23 "I'm sorry. Did you say something?"

24 Mr. Green, are you there?

25 MR. GREEN: Yes, I'm here. Can you hear me?

1 "Yes, I'm here. Can you hear me?"

2 THE COURT: It seems as if there is an echo
3 playing back after you and I speak.

4 "It seems as if there is an echo after you and I
5 speak."

6 MR. GREEN: Okay. Let me see if my, my
7 co-counsel, Amy Wolf, has the same problem. I'll try to
8 turn it over to her in case it's not.

9 THE COURT: Okay.

10 "Okay."

11 MS. WOLF: Your Honor, this is Amy Wolf from
12 Wachtel Lipton Rosen and Katz. I had intended to pick this
13 up from Mr. Green after he made a few remarks. Hopefully
14 we'll figure out the technical problems on our end so I can
15 turn it back to him.

16 But --

17 THE COURT: Ms. Wolf, will you tell --

18 Excuse me.

19 MS. WOLF: -- ConocoPhillips --

20 THE COURT: Ms. Wolf. Ms. Wolf.

21 MS. WOLF: Yes.

22 THE COURT: Unfortunately --

23 "Unfortunately --"

24 It sounds like you have the same echo as well.

25 Let me move on to the government and see --

1 "Let me move on and see" --

2 -- see if there is anything you can do on your
3 end and I'll see if I have a problem with anyone else.

4 "And I'll see if I have a problem with anyone
5 else."

6 Mr. DeMott, are you there?

7 MR. DeMOTT: I am, Your Honor. Unfortunately, I
8 am hearing the echo from ConocoPhillips. It appears to be
9 speakerphone, but I'm going to have the same issue as
10 counsel for ConocoPhillips did.

11 THE COURT: And I was hearing the echo as well.
12 Although not now.

13 Mr. DeMott, say something again.

14 MR. DeMOTT: Sure. Yes, Your Honor. I'm ready
15 to move forward if there is no echo or we could try to go
16 back to ConocoPhillips. Maybe the issue has been resolved
17 overall.

18 THE COURT: Okay. I'm not hearing the echo.

19 Let's just stick with what we might have,
20 Mr. DeMott. You go, and then we'll try to hear from
21 ConocoPhillips after you go.

22 Go ahead and add whatever you would like on the
23 sales procedures.

24 MR. DeMOTT: Thank you, Your Honor.

25 From the United States' perspective, no one

1 disputes that this Court has discretion to decide when and
2 how to proceed toward the contemplated sale, and no one
3 disputes that an OFAC license is necessary to carry out the
4 sale.

5 And while the United States was not asking for
6 deference to its foreign policy views and potential national
7 security interests on the Rule 60(b) issue, it is asking for
8 deference to its expressed interest on this -- on this issue
9 of moving forward towards the sale.

10 And as Your Honor is aware, that view is that
11 moving forward in the manner Crystallex suggests would
12 detrimental.

13 I'm not even sure the extent to which
14 Crystallex is disputing whether deference is appropriate on
15 this latter issue. There are some suggestions of that in
16 their brief, but I didn't hear Mr. Weigel assert that point
17 this morning.

18 But in any event, as the government's briefs
19 explain, courts routinely give this sort of case-specific
20 deference to the government's expressed interest,
21 particularly in the foreign policy realm.

22 And this kind of deference can lead to outright
23 dismissal of an action in some cases. It certainly
24 justifies the lesser remedy the United States is requesting
25 here, which is temporarily postponing judicial action to

1 allow OFAC to adjudicate the pending license application.

2 So I don't think there is really any serious
3 question that if the Court denies the pending motion to
4 dissolve or quash the writ of attachment, which Your Honor
5 said you haven't yet decided, that if you deny those
6 motions, it would be proper for the Court to consider the
7 expressed interest of the United States when deciding when
8 and how to move forward toward a potential sale.

9 Now, setting a sale date, as Mr. Weigel
10 suggested, is exactly the kind of thing Special
11 Representative Abrams has said, speaking for the United
12 States, would imperil U.S. foreign policy interests. And
13 Crystallex hasn't offered any persuasive reason to move
14 forward with that sort of step before it has obtained the
15 necessary OFAC license.

16 I mean, on the one hand you have these weighty
17 foreign policy interests and the United States' formal
18 representation that moving forward in the manner Crystallex
19 suggests at this time would imperil those interests, and
20 also on this side, moving forward before OFAC acts wouldn't
21 make a lot of sense because OFAC has discretion not only to
22 grant or deny the license, but also to grant it in part or
23 grant it under certain conditions or even bifurcate the
24 license request and sequence the authorization of actions in
25 the future. This is explained in the letter from Director

1 Gacki.

2 And on the other hand, Crystallex's suggestion
3 of a sale date that's less than four months from today
4 shows that the prefatory steps they suggest aren't expected
5 to take that long.

6 So, I mean, if and when Crystallex gets the
7 necessary OFAC license, it should be able to move forward
8 expeditiously. But if the Court authorizes Crystallex to
9 move forward right now without a license and then OFAC
10 denies the license after some steps have occurred, U.S.
11 foreign policy interests will needlessly have been imperiled
12 and the sale will be blocked and those damages and the
13 prefatory steps would have served no purpose.

14 So to avoid that, the United States is
15 respectfully asking the Court not to move forward toward the
16 contemplated sale unless and until Crystallex has in hand
17 the OFAC license that all parties agree is necessary.

18 That is really our position in a nutshell.

19 And with that, I'm happy to take any questions
20 Your Honor may have.

21 THE COURT: Sure. Just a couple.

22 Is it the government's view that a license is
23 required before the Court would establish sales procedures
24 or only when we would start to follow those sales procedures
25 or at some other time?

1 MR. DeMOTT: Well, your Honor, I think OFAC has
2 tried to draw a distinction in FAQs 808 and 809 between, you
3 know, whether there is -- whether it is imposing limitation
4 on what Your Honor can do and what Crystallex can do. So
5 the United States hasn't taken the position that Your Honor
6 is blocked from moving forward. You know, the Court can do
7 whatever it wants.

8 However, OFAC -- the Executive Orders and the
9 OFAC regulations and the FAQs cited in Director Gacki's
10 letter make clear that Crystallex might well be in violation
11 of OFAC regulations if it takes these proposed steps.

12 THE COURT: Okay. That was my only question.
13 Thank you very much.

14 Mr. Green, I'm willing to try again.

15 Are you there?

16 MR. GREEN: Yes, I am. Thank you.

17 Can you hear me normally?

18 THE COURT: I think I can. So go right ahead.

19 MR. GREEN: Okay. Thank you.

20 So what Your Honor sort of started out this
21 morning with an image of a decision tree, you know, sort of
22 where can I go, how far can we go without prejudice to what
23 I decide along the tree I think is helpful, particularly
24 because at the end of every branch of the tree, even maybe
25 some of the thinnest ones -- right? -- is ConocoPhillips.

1 Because the Rule 60 motion doesn't have any bearing on
2 ConocoPhillips, and then all the subbranches within that,
3 the temporal or the spatial, if there is such a thing,
4 arguments about -- that go to that alter-ego determination
5 don't have any bearing.

6 So considering that and understanding that, you
7 know, we want to give input conditionally based upon the
8 Court's decision, if the Court wants to go forward with
9 planning for a sale, obviously we should -- we have views to
10 express because, you know, back to the decision tree, if the
11 Rule 60 motion -- right? -- is if the Republic prevails,
12 will be the senior present creditor at the time.

13 If the action does not prevail, we'll be, you
14 know, second in line to Crystallex. And I think it is
15 common ground that if the U.S. government, through OFAC is
16 going to permit any kind of sale or even concrete prefatory
17 steps of a sale to go forward, that they would, you know --
18 they would also permit other creditors like ConocoPhillips,
19 besides Crystallex, to give effect to their Delaware
20 property law rights, you know, if either sanctions are
21 removed or if license are given.

22 So that's ConocoPhillips's position.

23 We're not advocating for a date, but,
24 conditionally, if the Court wants to plan for this sale, we
25 have some views on how to maximize value for that.

1 So to that end, and with the Court's permission,
2 I would introduce Amy Wolf, co-counsel, to discuss some of
3 those features or elements of a sale if the Court was
4 interested in pursuing a sale, given the U.S. Government's
5 position, that we would advocate for in the interest of
6 maximizing value.

7 THE COURT: All right. Well, let me do this. I
8 am only going to be able to give your, you or Ms. Green, you
9 know, a few minutes, maybe five or so. I do have some
10 questions for you all.

11 So let me throw my three or four questions out,
12 and I don't know which one of you wants to answer them, but
13 I'll try to sit quietly for a good five minutes or so and
14 let you answer them and add whatever else you want. Because
15 as you point out, there are a lot of decisions that have to
16 be made before I would factor in ConocoPhillips's views on
17 the sales process.

18 And I think your proposal is well set out in
19 your papers.

20 But my questions that I would like you all to
21 touch on, that is you or Ms. Wolf, if I were to appoint a
22 receiver, who were you envisioning would pay the expenses
23 for that receiver or for any other experts you would have me
24 hire?

25 You are the ones who take the position that this

1 would be a judicial sale as opposed to an execution sale.
2 Is it your view I need to make a decision on that; and, if
3 so, what is at stake?

4 And have you all applied for an OFAC license;
5 and if so, what is the status? And if not, why not?

6 So, you know, run with those questions and
7 whatever else you want to add for the next five minutes or
8 so.

9 Mr. Green or Ms. Wolf, either one.

10 MR. GREEN: Yes. So I'll address parts of that,
11 if not all of it.

12 You know, we're -- we are happy to hear that
13 there is common ground, it seems, amongst the parties that
14 if this should go forward, that the Court is authorized to
15 have some kind of Special Master or some kind of officer
16 with some debate around the scope of their powers, you
17 know, advising or answering to the Court or conducting the
18 sale.

19 I think that if there are fees to be paid for
20 professionals, if possible, they would come out of the
21 proceeds of any transaction, for one.

22 If -- on the question of a judicial versus
23 execution sale, I also think we don't really have a dispute
24 on that point any longer as it seems like all the parties at
25 least are in agreement that it, it sort of doesn't matter

1 because the Court, by virtue of a federal or Delaware law,
2 can appoint what I think everyone agrees should be some
3 professional to play the part that would otherwise be played
4 in a -- in a plain courthouse steps sale by the U.S. Marshal
5 or in the case of Delaware, by a sheriff.

6 So I don't know that there is any dispute on
7 that.

8 On the fees, you know, I think that goes to the
9 timing of a transaction in some respects because, you know,
10 our position, our overriding position is that this sale
11 should be conducted in a manner at a time that will fetch
12 the highest price. That time may or may not be now or when
13 Crystallex proposes it happen in January because of the
14 uncertainties and the elements that we have all been
15 discussing: The press, the universe of potential bidders,
16 and the ultimate price.

17 THE COURT: All right. OFAC license.

18 MR. GREEN: We've requested -- ConocoPhillips
19 has requested licenses, and it has been in dialogue with
20 OFAC throughout all of ConocoPhillips's applications for
21 its, you know, the registration of the SDNY judgment, the
22 request for the writ, and also to participate in any
23 judicial execution sale if there is one. We don't have any
24 special, you know -- any special knowledge about whether and
25 when OFAC may grant those licenses.

1 And we acknowledge the statement of interest in
2 the supporting statements by the director of OFAC in the
3 Crystallex case that it may not -- that these licenses or
4 any kind of authorization for a sheriff sale is not likely
5 to be forthcoming.

6 But we do have pending requests.

7 THE COURT: Okay. Thank you for that.

8 Briefly, Ms. Wolf, did you have anything to add?

9 Ms. Wolf?

10 (Pause.)

11 THE COURT: Mr. Green, do you know if she is
12 there?

13 MR. GREEN: She was.

14 MS. WOLF: Your Honor?

15 THE COURT: Ms. Wolf. Yes, I can hear you now.

16 MS. WOLF: I'm sorry. I didn't press star 6.

17 So I think that there's clearly less daylight
18 now than we thought there was on the issues we raised, which
19 is, there needs to be somebody to run the process. That's
20 what we meant when we said the Court should appoint a
21 receiver. We're not suggesting that a receiver should run
22 Citgo. Not, not by a long shot. But this is a very
23 complicated process that needs real expertise, and it can't
24 be sort of you choose five people to advertise to and I'll
25 choose six and I will get an investment banker for myself.

1 We think it is critical that there be a
2 court-appointed official, whatever Your Honor wants to call
3 that person, and we do think that there is authority to call
4 that person a receiver; and that is the Sixth Circuit case
5 that we cited in our -- in our papers.

6 But I would like briefly to also respond to the
7 judicial sale/execution sale. Not to make it a problem for
8 us, but I do -- I would recommend to Your Honor the case we
9 cited, Third Circuit case, *Branch Coal*, which I think makes
10 the point that the Court has the discretion to treat any
11 sale as a judicial sale if it so chooses. And doing that,
12 it then has all of the discretion created in Rule 69 and
13 in Section 2001 and 2004 of the judicial code to create
14 whatever procedures it wants to make this -- to make the
15 sale make sense.

16 So I -- the Court had asked that question of
17 several people, and I, I actually think that *Branch Coal*
18 does speak to -- precisely to that question. And I would
19 recommend that we follow the -- or that the Court follows
20 *Branch Coal's* indication that you're free to call this a
21 judicial sale and then take advantage of the discretion the
22 U.S. Code gives you, the Judicial Code gives you.

23 Thanks very much for your time.

24 THE COURT: Okay. Thank you very much.

25 Mr. Weigel, I can give you a couple of minutes

1 if you want to respond to anything.

2 MR. WEIGEL: Sure. I'll be very brief, and I
3 think Mr. Estrada may respond to the government, if that is
4 okay.

5 But basically, Your Honor, we think that the
6 Delaware statute in the *Deibler* case give the Court a lot of
7 discretion as to how to go forward, and it gives the parties
8 a lot of discretion. But we certainly believe that this --
9 that the process set forth in 324 and in chapter 49 of the
10 Delaware Code should be followed; that there should be a
11 public sale; and that it makes -- if it makes the Court feel
12 more comfortable, and I don't see a real downside to having
13 a Special Master appointed to help supervise the process,
14 that would be great. But we do think that the requirements
15 of the statute in terms of the advertising and the posting,
16 the bear minimum set forth in the statute should be met to
17 give us the protection of the -- following the judicial
18 procedures.

19 I take issue with what Mr. Eimer said about he
20 wants the negotiations to be in the hands of the judgment
21 debtor.

22 Well, that would make sense if he is going to
23 try and have a private sale before the judicial sale or
24 before the execution sale takes place. But he does not
25 control the execution sale. The time for them to sell their

1 own property, you know, has really come and gone. They
2 still could do it, if they can, but in terms of leaving
3 PDVSA in charge of the process, that's not the way this
4 works.

5 I would just note I think that the FAQs suggest
6 that OFAC would look kindly upon a settlement and so if
7 they're able to construct a sale where they can -- they can
8 sell it to some or all of the company to a third party and
9 we would agree then to release our lien upon payment, that
10 it -- certainly OFAC has given an indication that they would
11 find that acceptable.

12 And then I guess just the last point I wanted
13 to make, Your Honor, is that we did cite in our papers 5081
14 and the three-year rule. So I was a little surprised that
15 Mr. Eimer said he had not considered the issue, but I'm
16 gratified that he says he probably agrees that we are
17 protected by the Court's stay orders.

18 But if the Court is going to rely on that, I
19 would respectfully ask that we get that commitment more
20 firmly.

21 And with that, I will let Mr. Estrada speak.

22 THE COURT: Sure. Go ahead, Mr. Estrada.

23 MR. ESTRADA: Thank you, Your Honor.

24 Thank you, Your Honor. This is, again, Miguel
25 Estrada.

1 I wanted to say something very quickly about the
2 issues that were raised by government counsel and especially
3 with respect to the sanctions issues and OFAC's role.

4 I just want to sort of highlight one
5 significant, you know, distinction that I think should be
6 clear with the underlying legal issues.

7 There is a government regulation at issue here
8 that deals with what can and cannot be done with the
9 property of Venezuela.

10 And what the regulation says -- this is 35 CFR
11 591.407 -- is that what needs a license and cannot go
12 forward without the license is the enforcement of a lien,
13 judgment, award, decree, or other order through judicial
14 process according to transfer the interest in property, or
15 effecting the interest in property. And that ultimately
16 means the actual sale.

17 So what the sanctions regulation actually deals
18 with and what actually requires, you know, the license is
19 the actual sale.

20 In our view that you should have a dataroom and
21 have a process that leads to a target date is consistent
22 with the regulation. Now, there was reference made to FAQs
23 808 and 809. Frequently asked questions are things that are
24 published on the website of the Treasury that are, as they
25 say, intended to answer public questions.

1 Now, under administrative law principles,
2 these are treated as potentially entitled to something
3 called Auer deference. A-u-e-r. And the Supreme Court
4 just last year in a case called *Kisor vs. Wilkie*, K-i-s-o-r,
5 139 S.Ct. 2400, considered whether that deference even
6 should ever apply and/or to overrule deference.

7 The government stayed with its license, Supreme
8 Court, 5-4, but the Supreme Court severely limited when
9 these sorts of FAQ types sort of statements can never be
10 given deference, and the first, you know, requirement that
11 there be an ambiguity that has to be construed in the
12 applicable regulation.

13 And the reason that I'm actually getting to all
14 of this is there is no ambiguity in the regulation. What is
15 subject to licensing is the sale.

16 FAQ 809 purports to say that anything you do to
17 get ready for it might also be forbidden. But under the
18 governing *Kisor vs Wilkie* case, that is a view of somebody
19 at the Treasury that is entitled to zero administrative
20 deference. That is a legal point that I wanted to get in.

21 I'm happy to develop it, but I think the *Kisor*
22 opinion from the Supreme Court is self-explanatory.

23 You know, the point was made in arguing,
24 essentially, for a postjudgment indefinite stay, that we are
25 not injured by this at all. And that, you know, this can be

1 essentially be put off forever.

2 I think, you know, I will simply point out that
3 our property was taken a long time ago, and that not being
4 made whole is injurious. People don't litigate for sport.

5 And as we pointed out in our own papers, we have
6 this ongoing insolvency proceeding in Canada in which people
7 expect to be paid eventually and be made whole.

8 As my partner Mr. Weigel says, we're happy to
9 have Venezuela's concession in tolling. We think it is
10 correct. It doesn't mean, given our past experience, that
11 they will not come back in a year and try to take it back,
12 nor does it mean that other creditors will not have us, you
13 know, litigate the same question even if we ultimately win
14 it.

15 So we're still being injured by the absence of
16 a process which we think should be put forth by the Court.

17 As I said sort of just now, I think the
18 regulation itself is consistent with the Court outlining a
19 process of a dataroom and a target sale, which will, of
20 course, happen if we don't get a license.

21 But I think given that everything has been, you
22 know, litigated to death. If you ultimately do deny the
23 pending legal motions, it is high time that there be a
24 process so that my client can see some hope in getting paid.

25 And I thank the Court for your indulgence.

1 THE COURT: Thank you.

2 Mr. Eimer, briefly, anything you want to add?

3 MR. EIMER: Just one thing on the point that
4 Mr. Estrada just made.

5 He correctly refers to our deference in the
6 Supreme Court's opinion last year limiting it to
7 ambiguities.

8 And where I disagree with Mr. Estrada,
9 unfortunately, is that there is an ambiguity in the
10 regulation itself because the regulation prohibits taking
11 action that affects the property. And what that precisely
12 means is explained in FAQ 808 and 809 and, therefore,
13 under the current deference rules from the Supreme Court,
14 this Court is required to give credence to those -- that
15 interpretation of the regulation itself because it's not
16 clear at all what "affecting" the property means.

17 It clearly does not mean something more than
18 just the sale of the property which is provided for
19 elsewhere in the regulation.

20 And that's the only -- and, again, Mr. Estrada
21 points to no harm to Crystallex from not going ahead now and
22 establishing procedures. The concern he has was over the
23 inability to sell the product -- the stock right now. That
24 is not the issue before the Court. That is subject to OFAC
25 license, and that is what we all agree to.

1 Those are the only points I had, Your Honor.

2 THE COURT: Thank you.

3 Mr. --

4 MR. ESTRADA: Your Honor.

5 THE COURT: Hold on.

6 Mr. DeMott, anything briefly you want to add?

7 MR. DeMOTT: I was largely going to make the two
8 points that Mr. Eimer made.

9 You know, just to be clear, OFAC does not agree
10 with Mr. Estrada's interpretation of 31 CFR 591.407; that
11 that is only limited to the sale.

12 As Mr. Eimer said, it talks about not doing
13 anything that could alter or affect property or interest in
14 property that are blocked, as these shares clearly are under
15 the sanctions regime.

16 But, I mean, we don't really see a need to
17 litigate exactly how far toward a sale, if at all, you know,
18 Crystallex could go under the regulations because the harm
19 Mr. Estrada is complaining about is the ultimate sale, and
20 no one disputes that that can't happen without an OFAC
21 license.

22 So, again, Crystallex just doesn't have a
23 persuasive reason for pressing ahead immediately,
24 imperilling U.S. foreign policy interests when everyone
25 agrees they can't move forward unless and until they get the

1 OFAC license.

2 THE COURT: Okay. Thank you.

3 I'll let Crystallex have the last word just very
4 briefly.

5 MR. ESTRADA: Thank you, Your Honor.

6 I recommend, you know, the *Kisor* case. One
7 of the things Justice Kagan did in barely keeping the
8 doctrine alive was to say that one of the ways in which an
9 agency does not get deference is where things are just not
10 within its bailiwick.

11 So just as the -- as the -- you know, the
12 interpretation of common law terms, things like property and
13 the things affects government, you know, properties terms,
14 things that actually, say, fall more naturally into a
15 judge's bailiwick, I think, you know, the judicial process
16 and the enforcement of property rights I think are things
17 for the Court.

18 The second thing that she said does not get
19 deference is convenience litigating positions or things that
20 are made posthoc for particular cases. And I think, you
21 know, the history of 808 or 809, which were basically issued
22 in the aftermath of Venezuela's loss of their hearing en
23 banc in the Third Circuit, really shows that this is the
24 type of litigating position that was exactly which I was
25 thinking of where the government comes in with a letter that

1 was intended to effect a specific case, and *Kisor* makes
2 clear that that is just not entitled to any deference, even
3 if you could otherwise meet, you know, the requirements of
4 the case, which I don't think this does.

5 And so I recommend the case to your attention in
6 light of the very specific reading of the language of the
7 regulation.

8 THE COURT: All right. Thank you very much.

9 We are just about done. I just need to say a
10 few things.

11 First, thank you to all of you. This was very
12 helpful for me.

13 Also, thank you for eliminating most of the
14 technical difficulties that we encountered last time. Today
15 certainly went smoother, and I appreciate that.

16 I will be taking everything under advisement. I
17 recognize there is a lot in front of me, and you all have
18 provided me a lot of input.

19 I have one, I suppose, colloquially homework
20 assignment for those who are represented on the call, and it
21 relates to the three-year Delaware statute that Mr. Weigel
22 emphasized in his argument today and have cited in the
23 briefs as well.

24 I do want to have the parties' positions after
25 you have a chance to consider them and talk to one another.

1 I would like your positions on the record,
2 and so I'm directing that the plaintiff here file a status
3 report on behalf of not just Crystallex but the Republic and
4 PDVSA, PDVH, Citgo. I would like the United States to
5 indicate whether they have a position as well, and I would
6 like ConocoPhillips to indicate if they have a position.

7 A week from today what I'm looking for is
8 essentially how much does anyone think I need to worry about
9 this three-year provision. Do you have is a view on whether
10 the timing has been tolled? Or if it hasn't been tolled, if
11 you are agreeable to me tolling it? And does it have any
12 implications for anybody's priority status?

13 I would like that feedback as I evaluate how to
14 move forward and some of the arguments that Crystallex is
15 making about harm.

16 Any questions about what I'm looking for from
17 you a week from today?

18 Mr. Weigel?

19 MR. WEIGEL: No, Your Honor.

20 THE COURT: Okay. Anybody else on the call have
21 a question about that?

22 (Pause.)

23 THE COURT: All right. I'm going to take that
24 silence as a "no."

25 Thank you all again. Everybody stay safe and

1 healthy. I appreciate very much the argument and have a
2 good rest of the day. Bye-bye.

3 (The attorneys respond, "Thank you, Your
4 Honor.")

5 (Telephonic oral argument ends at 12:05 p.m.)
6

7 I hereby certify the foregoing is a true and accurate
8 transcript from my stenographic notes in the proceeding.

9 /s/ Brian P. Gaffigan
10 Official Court Reporter
U.S. District Court
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\$	4	A		
\$1.25 [1] - 65:25 \$10 [1] - 67:5 \$50 [1] - 67:15	4 [1] - 17:2 425 [1] - 62:1 49 [4] - 63:25, 69:9, 91:17, 112:9 4972 [1] - 69:9 4975 [1] - 91:18	a-u-e-r [1] - 115:3 a.m [1] - 3:21 ability [1] - 66:6 able [10] - 24:8, 46:23, 74:3, 84:3, 95:14, 99:15, 99:17, 104:7, 107:8, 113:7 ABRAMS [1] - 2:2 Abrams [10] - 42:12, 42:16, 43:14, 44:24, 45:11, 46:15, 52:20, 53:3, 87:25, 103:11 Abrams' [1] - 58:10 absence [2] - 16:21, 116:15 absent [2] - 60:9, 81:13 absolutely [4] - 44:22, 66:16, 75:15, 78:6 accept [2] - 51:8, 51:11 acceptable [1] - 113:11 access [3] - 53:18, 75:22, 83:7 accordance [1] - 16:21 according [2] - 66:3, 114:14 account [3] - 33:10, 34:5, 75:25 accurate [2] - 91:15, 122:7 accuse [1] - 74:8 accused [1] - 8:12 accusing [1] - 69:22 achieve [1] - 31:19 acknowledge [1] - 110:1 acknowledged [1] - 58:24 act [3] - 26:14, 26:15, 33:20 acting [1] - 42:9 Action [1] - 6:18 ACTION [1] - 1:4 action [8] - 20:6, 60:7, 65:13, 72:1, 102:23, 102:25, 106:13, 117:11 actions [5] - 25:15, 35:25, 56:12, 56:19, 103:24 active [1] - 76:1 acts [2] - 27:10, 103:20 actual [7] - 10:10, 10:12, 16:23, 49:1,	53:8, 114:16, 114:19 ad [2] - 12:5, 12:14 add [15] - 12:21, 36:16, 36:20, 36:25, 41:2, 41:6, 48:14, 60:21, 63:4, 101:22, 107:14, 108:7, 110:8, 117:2, 118:6 addition [2] - 35:12, 59:22 additional [6] - 66:6, 71:3, 71:4, 72:5, 76:5, 94:22 address [13] - 5:25, 6:2, 9:8, 9:21, 25:5, 25:8, 34:4, 37:2, 58:8, 86:1, 86:25, 94:15, 108:10 addressed [2] - 10:14, 89:6 addressing [2] - 11:19, 28:6 adequately [4] - 47:3, 72:20, 72:21, 89:6 adjudicate [2] - 47:14, 103:1 adjudicated [4] - 12:7, 50:5, 50:25, 64:23 adjudicating [1] - 60:12 administration [7] - 12:2, 18:6, 18:7, 53:7, 55:2, 55:3, 87:17 administrative [2] - 115:1, 115:19 advance [1] - 55:22 advantage [1] - 111:21 adverse [1] - 50:16 adversely [2] - 91:3, 98:19 advertise [4] - 63:20, 70:8, 70:13, 110:24 advertisement [4] - 69:8, 71:2, 76:5 advertisements [2] - 65:10, 71:3 advertising [5] - 65:18, 70:17, 74:19, 74:20, 112:15 advised [4] - 62:24, 65:19, 88:16, 89:16 advisement [1] - 120:16 advising [1] - 108:17 advisor [1] - 65:19 advocacy [1] - 32:2 advocate [2] - 76:22, 107:5 advocating [1] -	106:23 affect [1] - 118:13 affected [2] - 15:6, 20:15 affecting [1] - 117:16 affection [1] - 48:20 affects [2] - 117:11, 119:13 affirmatively [1] - 55:10 affirmed [1] - 76:14 affords [1] - 64:1 aftermath [1] - 119:22 afterwards [3] - 20:14, 49:4, 62:19 agency [1] - 119:9 agent [2] - 92:6, 92:11 ago [4] - 12:3, 44:6, 71:25, 116:3 agree [9] - 43:12, 89:9, 90:11, 93:12, 98:13, 104:17, 113:9, 117:25, 118:9 agreeable [1] - 121:11 agreed [1] - 73:20 agreement [1] - 108:25 agrees [4] - 27:3, 109:2, 113:16, 118:25 ahead [10] - 8:14, 61:1, 78:5, 85:24, 97:13, 101:22, 105:18, 113:22, 117:21, 118:23 aid [3] - 54:4, 80:23, 82:21 aligned [1] - 87:14 alive [1] - 119:8 allegation [3] - 16:12, 39:21, 75:23 allow [6] - 15:20, 34:25, 64:17, 67:2, 79:17, 103:1 allowed [2] - 67:12, 85:13 allowing [1] - 80:12 allows [3] - 15:22, 59:10, 62:12 alluded [1] - 33:3 alluding [1] - 23:25 almost [1] - 11:7 alter [23] - 18:20, 21:2, 21:13, 21:21, 22:3, 22:4, 22:9, 22:17, 23:6, 23:14, 23:15, 30:4, 35:15, 38:18, 38:19, 39:1, 41:24, 56:11, 56:18, 56:22, 76:19, 106:4, 118:13 alter-ego [19] - 21:2,
/				
/s [1] - 122:9	5			
1	5 [2] - 63:25, 91:17 5-4 [1] - 115:8 5081 [1] - 113:13 591-407 [1] - 92:5 591.310 [1] - 92:8 591.407 [2] - 114:11, 118:10			
10 [6] - 63:25, 66:14, 66:16, 67:15, 71:19, 91:16 100 [4] - 36:3, 66:19, 66:21, 69:25 11 [1] - 59:18 11th [1] - 73:12 12 [1] - 33:2 12:05 [1] - 122:5 139 [1] - 115:5 144 [1] - 29:8 14th [1] - 33:2 1581 [1] - 71:19 17 [1] - 1:9 17-151-LPS [2] - 1:6, 6:18	6			
2	6 [1] - 110:16 60 [3] - 6:23, 106:1, 106:11 60(B) [2] - 41:7, 41:14 60(b) [17] - 10:7, 26:10, 27:18, 27:22, 28:6, 28:18, 34:22, 34:25, 35:9, 36:21, 43:17, 50:3, 50:20, 50:24, 51:3, 63:5, 102:7 60(b)(5) [2] - 10:13, 52:2 60(b)(6) [2] - 10:13, 52:2 69 [13] - 36:22, 37:9, 37:17, 37:18, 40:2, 40:17, 54:13, 54:15, 61:8, 61:18, 61:22, 111:12			
2				
2 [3] - 42:14, 47:17, 60:4 2001 [1] - 111:13 2004 [1] - 111:13 2017 [2] - 76:14, 78:8 2018 [1] - 41:24 2019 [3] - 76:15, 76:16, 78:11 2020 [2] - 1:9, 48:4 2400 [1] - 115:5 291 [1] - 92:3	8			
3	808 [4] - 105:2, 114:23, 117:12, 119:21 809 [5] - 105:2, 114:23, 115:16, 117:12, 119:21			
3 [1] - 59:18 31 [2] - 92:5, 118:10 32 [3] - 65:19, 70:14, 70:15 32.5 [1] - 70:6 324 [6] - 37:23, 61:19, 63:18, 69:8, 80:13, 112:9 35 [1] - 114:10	9			
	90 [1] - 96:7 94 [1] - 61:16 95 [1] - 61:16 9:07 [1] - 3:21			

<p>21:13, 21:21, 22:3, 22:4, 22:9, 23:6, 23:14, 23:15, 30:4, 35:15, 38:18, 38:19, 39:1, 41:24, 56:11, 56:18, 56:22, 106:4</p> <p>alter-egos [1] - 22:17</p> <p>alternation [1] - 10:24</p> <p>Altman [1] - 12:15</p> <p>Ambassador [1] - 87:25</p> <p>amber [4] - 29:1, 29:5, 33:16, 48:24</p> <p>ambiguities [1] - 117:7</p> <p>ambiguity [3] - 115:11, 115:14, 117:9</p> <p>amount [5] - 66:15, 66:18, 73:2, 77:12, 91:6</p> <p>amply [1] - 35:2</p> <p>Amy [4] - 5:22, 100:7, 100:11, 107:2</p> <p>AMY [1] - 2:21</p> <p>analysis [13] - 18:21, 27:25, 28:18, 28:20, 33:16, 34:9, 38:17, 38:19, 38:20, 39:13, 56:22</p> <p>AND [1] - 1:2</p> <p>Andrea [1] - 47:16</p> <p>answer [15] - 9:4, 13:20, 29:25, 32:23, 36:22, 49:12, 52:14, 55:23, 81:2, 88:10, 97:12, 97:16, 107:12, 107:14, 114:25</p> <p>answered [1] - 54:9</p> <p>answering [2] - 25:10, 108:17</p> <p>anticipate [2] - 78:9, 83:2</p> <p>anticipates [1] - 47:13</p> <p>anyway [1] - 19:14</p> <p>APA [1] - 79:11</p> <p>apologize [1] - 9:17</p> <p>appeal [5] - 40:13, 55:15, 72:10, 72:16, 78:10</p> <p>appealed [1] - 40:15</p> <p>appearance [2] - 5:17, 6:9</p> <p>APPEARANCES [3] - 1:12, 2:1, 3:1</p> <p>appeared [1] - 44:2</p> <p>applaud [1] - 49:16</p> <p>applicable [1] - 115:12</p> <p>application [8] -</p>	<p>28:10, 46:24, 60:12, 78:18, 88:9, 88:18, 89:8, 103:1</p> <p>applications [2] - 47:20, 109:20</p> <p>applied [3] - 61:15, 61:19, 108:4</p> <p>apply [6] - 37:19, 57:10, 61:18, 81:17, 84:20, 115:6</p> <p>appoint [7] - 80:4, 81:24, 82:4, 92:10, 107:21, 109:2, 110:20</p> <p>appointed [4] - 68:24, 91:22, 111:2, 112:13</p> <p>appointing [1] - 80:14</p> <p>appointment [2] - 69:1, 92:6</p> <p>appreciate [4] - 12:1, 93:18, 120:15, 122:1</p> <p>approach [2] - 37:21, 58:1</p> <p>appropriate [8] - 14:24, 30:4, 34:1, 75:21, 79:19, 80:22, 90:25, 102:14</p> <p>appropriately [1] - 26:1</p> <p>approval [4] - 24:8, 67:24, 68:2, 73:6</p> <p>approvals [1] - 67:13</p> <p>approved [1] - 71:1</p> <p>arbitrable [2] - 12:24, 28:9</p> <p>arbitration [1] - 74:10</p> <p>archaic [1] - 69:10</p> <p>area [1] - 69:11</p> <p>argue [1] - 38:20</p> <p>argued [4] - 6:22, 82:11, 94:14, 98:11</p> <p>argues [1] - 27:22</p> <p>arguing [5] - 5:5, 25:23, 52:5, 93:19, 115:23</p> <p>Argument [1] - 1:9</p> <p>argument [41] - 3:21, 4:16, 6:14, 7:10, 10:15, 21:11, 22:8, 22:13, 23:19, 23:22, 23:24, 24:6, 29:3, 29:4, 30:18, 32:8, 32:10, 33:2, 35:15, 35:16, 35:19, 36:4, 36:9, 36:10, 41:17, 48:24, 48:25, 54:5, 58:25, 61:14, 61:17, 61:18, 61:19, 61:21, 61:22, 61:25, 85:22, 94:16, 120:22, 122:1, 122:5</p>	<p>arguments [19] - 9:10, 10:12, 10:16, 11:20, 12:17, 29:12, 40:5, 51:1, 54:19, 55:5, 55:16, 55:17, 55:20, 55:21, 61:7, 61:15, 68:21, 106:4, 121:14</p> <p>arise [1] - 54:1</p> <p>arising [1] - 47:25</p> <p>arm [1] - 53:24</p> <p>Aronstam [1] - 5:20</p> <p>ARONSTAM [1] - 2:15</p> <p>arranging [1] - 6:12</p> <p>arrives [1] - 98:13</p> <p>Arsht [1] - 5:3</p> <p>ARSHT [1] - 2:9</p> <p>articles [2] - 17:7, 43:10</p> <p>articulation [2] - 34:12, 52:6</p> <p>aside [1] - 98:12</p> <p>aspect [1] - 58:17</p> <p>aspects [1] - 66:23</p> <p>aspersion [1] - 25:13</p> <p>aspersions [3] - 26:4, 26:13, 33:19</p> <p>assembly [1] - 36:1</p> <p>Assembly [1] - 26:23</p> <p>assert [2] - 70:19, 102:16</p> <p>asserted [1] - 24:11</p> <p>asserting [1] - 19:25</p> <p>assertion [5] - 20:1, 20:2, 20:8, 24:24, 68:6</p> <p>asset [5] - 64:6, 64:11, 69:22, 69:23, 81:11</p> <p>assets [7] - 22:10, 45:15, 54:2, 59:11, 77:4, 96:2, 98:24</p> <p>assignment [1] - 120:20</p> <p>assist [1] - 97:18</p> <p>Assistant [1] - 3:4</p> <p>assistant [1] - 42:9</p> <p>assume [4] - 34:3, 44:4, 86:2, 98:18</p> <p>assumed [1] - 94:1</p> <p>assuming [2] - 33:15, 64:25</p> <p>assumption [2] - 7:9, 91:12</p> <p>attach [3] - 21:14, 28:12, 57:3</p> <p>attached [3] - 20:18, 37:24, 37:25</p> <p>attachment [15] - 20:14, 37:20, 38:11, 39:4, 40:17, 56:23, 61:8, 61:11, 84:4, 84:7, 85:10, 85:13,</p>	<p>94:2, 94:6, 103:4</p> <p>attention [4] - 50:9, 90:15, 93:10, 120:5</p> <p>attorney [5] - 16:12, 17:12, 17:15, 31:2, 42:9</p> <p>Attorney [1] - 3:4</p> <p>attorneys [4] - 17:13, 42:6, 42:21, 122:3</p> <p>attractive [1] - 66:6</p> <p>auction [6] - 66:20, 68:5, 69:19, 89:17</p> <p>audacity [1] - 56:1</p> <p>Auer [1] - 115:3</p> <p>August [5] - 33:2, 41:24, 59:18, 62:1, 71:24</p> <p>authority [7] - 23:19, 26:18, 35:16, 43:7, 57:5, 92:9, 111:3</p> <p>authorization [2] - 103:24, 110:4</p> <p>authorized [2] - 42:8, 108:14</p> <p>authorizes [1] - 104:8</p> <p>authorizing [1] - 47:11</p> <p>available [6] - 5:24, 6:2, 11:14, 11:17, 14:24, 83:15</p> <p>avenues [1] - 13:6</p> <p>avoid [4] - 38:9, 49:10, 59:5, 104:14</p> <p>avoided [1] - 53:19</p> <p>award [2] - 28:9, 114:13</p> <p>aware [5] - 15:16, 48:2, 65:12, 78:22, 102:10</p>	<p>110:25</p> <p>bankers [1] - 76:7</p> <p>bankruptcy [1] - 81:13</p> <p>Bankruptcy [1] - 95:21</p> <p>bankruptcy-type [1] - 81:13</p> <p>bare [1] - 16:18</p> <p>bare-naked [1] - 16:18</p> <p>barely [1] - 119:7</p> <p>bargain [1] - 68:7</p> <p>based [7] - 25:7, 34:23, 36:16, 56:24, 61:14, 96:13, 106:7</p> <p>basis [16] - 12:5, 12:14, 17:8, 17:25, 27:11, 28:22, 30:3, 30:10, 32:10, 36:5, 39:6, 43:10, 49:8, 53:8, 56:23, 57:2</p> <p>Bayliss [1] - 4:13</p> <p>BAYLISS [3] - 2:2, 2:3, 4:12</p> <p>bear [3] - 28:13, 34:9, 112:16</p> <p>bearing [2] - 106:1, 106:5</p> <p>bears [1] - 57:15</p> <p>beating [1] - 71:6</p> <p>become [1] - 18:9</p> <p>becomes [1] - 72:13</p> <p>BEFORE [1] - 1:11</p> <p>begin [2] - 6:24, 8:3</p> <p>beginning [3] - 3:21, 17:21, 22:7</p> <p>behalf [11] - 3:5, 4:2, 4:13, 4:16, 5:1, 5:2, 5:6, 5:20, 85:18, 99:7, 121:3</p> <p>behind [1] - 70:19</p> <p>belabor [1] - 32:16</p> <p>belonged [3] - 20:10, 20:20, 38:5</p> <p>belonging [1] - 20:1</p> <p>benefit [5] - 6:15, 20:16, 20:19, 49:3, 94:12</p> <p>benefits [1] - 76:4</p> <p>best [6] - 34:12, 51:6, 55:7, 66:21, 70:24, 83:6</p> <p>better [4] - 17:14, 45:24, 99:20, 99:21</p> <p>between [7] - 22:17, 25:16, 45:2, 81:15, 96:17, 96:23, 105:2</p> <p>BFP [1] - 64:10</p> <p>bid [3] - 66:18, 67:15, 67:18</p> <p>bidder [5] - 67:7, 67:22, 68:1, 68:3,</p>
B				
<p>b)(5) [1] - 10:18</p> <p>b)(6) [1] - 11:2</p> <p>B.V [3] - 2:23, 2:24</p> <p>backed [1] - 51:25</p> <p>backing [3] - 15:12, 18:3, 53:17</p> <p>backstop [1] - 47:8</p> <p>backup [1] - 52:4</p> <p>bad [1] - 83:25</p> <p>bailiwick [3] - 69:18, 119:10, 119:15</p> <p>balance [2] - 87:1, 88:23</p> <p>banana [1] - 13:2</p> <p>banc [2] - 50:12, 119:23</p> <p>Bancec [3] - 28:10, 38:14, 38:19</p> <p>banker [2] - 71:6,</p>				

<p>68:12 bidders [4] - 67:9, 67:11, 96:4, 109:15 bidding [1] - 55:2 bids [2] - 66:15, 69:17 bifurcate [1] - 103:23 biggest [1] - 95:23 billion [2] - 65:25, 70:6 binding [3] - 26:16, 26:17, 41:20 bit [10] - 9:6, 9:20, 15:8, 16:11, 17:21, 18:11, 18:17, 30:17, 44:6, 61:24 bleed [1] - 30:17 bless [1] - 77:6 Blinds [1] - 11:4 block [1] - 20:7 blocked [3] - 104:12, 105:6, 118:14 boilerplate [2] - 58:11, 58:19 Bolivarian [3] - 2:7, 4:13, 6:17 BOLIVARIAN [1] - 1:6 Bolton [2] - 16:6, 53:4 bond [7] - 55:11, 55:14, 71:15, 72:16, 72:18, 72:21 bondholders' [1] - 48:5 book [1] - 16:7 bootstrap [1] - 48:25 Borson [1] - 42:11 bottom [1] - 45:1 Branch [3] - 111:9, 111:17, 111:20 branch [8] - 17:11, 17:16, 18:14, 41:10, 41:18, 53:1, 88:8, 105:24 Brian [2] - 1:24, 122:9 brief [14] - 7:5, 9:3, 10:9, 13:24, 17:1, 33:2, 41:21, 42:6, 51:13, 59:18, 60:14, 87:11, 102:16, 112:2 briefing [4] - 6:21, 9:1, 10:15, 12:20 briefly [9] - 6:24, 48:13, 54:6, 90:4, 110:8, 111:6, 117:2, 118:6, 119:4 briefs [6] - 42:11, 46:9, 79:1, 79:8, 102:18, 120:23 bring [1] - 73:15 broad [1] - 66:4 broadcast [1] - 8:8 brought [3] - 50:20,</p>	<p>52:1, 62:11 Budget [1] - 11:4 buff [1] - 18:8 bunch [2] - 78:15, 80:10 burden [3] - 70:9, 75:23, 90:16 Burke [1] - 39:17 Burke's [2] - 39:12, 39:13 burn [1] - 58:9 bushes [1] - 71:7 buyer [2] - 77:5 BY [11] - 1:14, 1:17, 1:20, 2:3, 2:5, 2:9, 2:12, 2:16, 2:18, 2:21, 3:3 bye [2] - 122:2 bye-bye [1] - 122:2 bystander [1] - 27:9</p>	<p>catch [1] - 11:2 catch-all [1] - 11:2 categorically [1] - 29:14 category [1] - 21:15 caution [1] - 69:3 cavalier [1] - 32:3 cert [3] - 52:10, 76:24, 77:2 certain [10] - 23:13, 36:13, 53:1, 57:5, 72:8, 74:20, 80:19, 83:11, 96:6, 103:23 certainly [20] - 47:8, 73:1, 74:8, 75:25, 77:1, 77:23, 80:15, 82:7, 82:14, 83:7, 84:13, 84:18, 84:22, 85:8, 86:18, 95:15, 102:23, 112:8, 113:10, 120:15 certificates [1] - 61:11 certify [1] - 122:7 cetera [1] - 85:19 CFR [3] - 92:5, 114:10, 118:10 challenge [4] - 62:6, 62:9, 62:25, 79:11 challenging [1] - 62:15 chance [9] - 6:7, 6:24, 7:4, 7:5, 7:14, 7:15, 48:14, 71:8, 120:25 change [15] - 18:6, 20:21, 24:14, 33:5, 33:6, 33:8, 33:9, 33:13, 33:14, 33:23, 51:17, 51:19, 53:10, 57:16, 60:9 changed [10] - 27:3, 27:6, 28:12, 32:7, 34:8, 41:22, 49:4, 57:14, 86:12, 90:6 changes [1] - 18:7 changing [2] - 20:21, 89:2 chapter [3] - 63:25, 91:17, 112:9 characterize [1] - 27:19 characterizing [1] - 59:13 charge [2] - 97:7, 113:3 Chavez [1] - 47:25 cheapest [1] - 75:22 cheaply [1] - 70:12 check [1] - 94:4 Chief [1] - 1:11 China [1] - 58:14 choices [2] - 11:9,</p>	<p>11:11 choose [3] - 82:8, 110:24, 110:25 chooses [3] - 76:12, 82:19, 111:11 chosen [1] - 44:4 Circuit [18] - 10:21, 11:4, 11:21, 29:6, 29:17, 37:14, 50:10, 50:12, 50:14, 50:19, 50:23, 74:12, 76:14, 82:12, 111:4, 111:9, 119:23 circuit [3] - 11:21, 52:6, 52:7 Circuit's [3] - 75:3, 76:18, 76:20 circular [1] - 66:1 circumstance [1] - 65:6 circumstances [17] - 11:6, 26:10, 27:4, 27:6, 28:12, 28:25, 32:7, 32:11, 32:12, 33:23, 34:8, 34:23, 35:2, 35:3, 41:23, 57:14, 86:12 Circumstances [1] - 33:4 cite [4] - 23:19, 41:20, 62:1, 113:13 cited [8] - 17:7, 26:18, 39:10, 52:9, 105:9, 111:5, 111:9, 120:22 CITGO [2] - 2:13 Citgo [14] - 45:15, 54:1, 62:14, 62:17, 62:18, 65:25, 66:9, 68:8, 70:2, 70:23, 76:9, 80:21, 110:22, 121:4 citing [1] - 52:6 civil [2] - 42:9, 49:23 claim [11] - 15:4, 16:10, 16:18, 16:23, 18:3, 24:22, 26:9, 27:20, 38:5, 43:4, 57:12 claiming [3] - 16:1, 17:13, 24:18 claims [6] - 16:7, 21:20, 24:2, 24:9, 47:24, 70:4 clarify [1] - 37:3 classified [1] - 16:8 clean [1] - 24:9 clear [36] - 9:19, 11:5, 12:1, 12:3, 32:5, 32:19, 36:3, 37:6, 37:15, 37:18, 38:2, 38:9, 41:13, 45:4,</p>	<p>45:6, 49:7, 51:5, 52:14, 61:17, 63:24, 64:7, 65:1, 69:3, 77:24, 82:7, 82:13, 83:18, 87:25, 95:13, 96:13, 105:10, 114:6, 117:16, 118:9, 120:2 clearly [8] - 30:13, 88:12, 93:2, 96:17, 110:17, 117:17, 118:14 client [5] - 12:23, 26:4, 54:23, 94:5, 116:24 clients [2] - 62:21, 93:16 close [1] - 84:23 closely [3] - 46:4, 90:14 closely-held [1] - 90:14 co [4] - 4:4, 90:15, 100:7, 107:2 co-counsel [3] - 4:4, 100:7, 107:2 Coal [2] - 111:9, 111:17 Coal's [1] - 111:20 coats [1] - 55:3 Code [9] - 37:23, 69:7, 71:19, 74:17, 91:17, 111:22, 112:10 code [3] - 63:18, 92:3, 111:13 cogent [1] - 31:14 Coke [1] - 50:6 collateral [2] - 37:11, 61:25 colleague [1] - 42:11 collect [2] - 21:7, 72:17 collecting [1] - 22:3 collection [2] - 20:5, 22:19 colloquially [1] - 120:19 Coltec [1] - 11:4 Columbia [3] - 1:20, 2:6, 3:4 combination [1] - 28:8 comfort [1] - 50:9 Comfort [1] - 50:11 COMFORT [1] - 50:11 comfortable [2] - 80:16, 112:12 coming [1] - 24:6 commence [1] - 62:12 comments [1] - 38:3 commit [2] - 39:2, 39:8 commitment [1] -</p>
C				
<p>camera [1] - 15:22 Canada [1] - 116:6 cannot [3] - 50:24, 114:8, 114:11 Capital [1] - 79:4 Caracas [1] - 87:20 carefully [2] - 14:16, 44:5 carry [1] - 102:3 case [55] - 6:16, 7:24, 11:3, 11:20, 12:7, 12:11, 12:12, 13:15, 13:17, 14:2, 14:24, 16:2, 16:25, 30:8, 32:15, 34:14, 39:2, 39:10, 39:12, 46:1, 46:4, 48:3, 49:22, 50:9, 51:10, 52:3, 52:6, 52:18, 54:11, 63:24, 64:10, 65:1, 72:22, 74:7, 83:24, 86:4, 90:12, 93:21, 95:5, 100:8, 102:19, 109:5, 110:3, 111:4, 111:8, 111:9, 112:6, 115:4, 115:18, 119:6, 120:1, 120:4, 120:5 case-specific [1] - 102:19 cases [16] - 10:21, 10:25, 11:5, 12:15, 12:16, 14:6, 15:15, 21:11, 21:18, 21:20, 41:20, 50:15, 68:23, 69:3, 102:23, 119:20 cast [4] - 25:13, 26:5, 26:14, 33:19</p>				

<p>113:19 Committee [1] - 50:11 common [3] - 106:15, 108:13, 119:12 companies [5] - 24:3, 53:18, 65:19, 65:23, 70:14 Company [1] - 2:23 company [16] - 15:6, 16:14, 24:17, 24:25, 65:4, 68:10, 68:11, 68:12, 70:5, 71:9, 74:25, 80:19, 90:14, 98:9, 98:16, 113:8 compelling [1] - 50:13 competent [1] - 68:14 competing [2] - 46:6, 69:17 complaining [1] - 118:19 completely [3] - 55:19, 59:14, 81:14 complex [2] - 96:1, 96:15 complexity [1] - 97:9 compliance [1] - 39:11 complicated [2] - 95:11, 110:23 complicating [1] - 96:12 comply [2] - 39:5, 53:19 complying [1] - 54:16 components [1] - 46:12 conceded [1] - 61:23 concern [5] - 45:8, 81:19, 95:23, 96:7, 117:22 concerned [3] - 27:7, 46:18, 83:3 concerns [2] - 41:15, 45:3 concession [1] - 116:9 conclusion [3] - 47:2, 56:24, 57:7 conclusively [1] - 33:14 concrete [3] - 26:24, 58:19, 106:16 conditional [1] - 45:14 conditionally [2] - 106:7, 106:24 conditions [2] - 36:5, 103:23 conduct [10] - 20:22, 24:14, 34:15, 49:4, 54:15, 66:20, 68:5, 85:4, 91:22, 92:7</p>	<p>conducted [1] - 109:11 conducting [3] - 91:19, 97:23, 108:17 confidence [3] - 41:11, 66:9, 74:9 confined [1] - 30:19 confirm [1] - 34:16 confirmation [1] - 52:15 Congress [3] - 12:3, 12:17, 27:24 conjunction [1] - 88:8 connection [1] - 47:6 Connor [1] - 79:3 Conoco [7] - 68:20, 70:4, 70:5, 70:13, 70:14, 71:4, 97:2 Conoco's [1] - 81:17 ConocoPhillips [18] - 2:23, 2:24, 2:24, 5:21, 6:7, 7:13, 99:4, 99:7, 100:19, 101:8, 101:10, 101:16, 101:21, 105:25, 106:2, 106:18, 109:18, 121:6 ConocoPhillips' [2] - 5:25, 6:2 ConocoPhillips's [3] - 106:22, 107:16, 109:20 cons [1] - 81:9 consequence [2] - 27:13, 58:1 consequences [1] - 33:21 consider [8] - 30:10, 34:1, 36:10, 53:9, 79:16, 80:8, 103:6, 120:25 considerably [1] - 31:19 consideration [1] - 21:4 considerations [1] - 60:10 considered [8] - 30:6, 31:7, 31:24, 34:3, 42:7, 69:1, 113:15, 115:5 considering [2] - 29:10, 106:6 consistent [3] - 57:8, 114:21, 116:18 constable [1] - 91:19 construct [1] - 113:7 construed [1] - 115:11 contains [1] - 66:2 contemplate [1] - 85:9 contemplated [3] -</p>	<p>84:10, 102:2, 104:16 contend [2] - 49:17, 54:14 contention [1] - 51:6 contentions [2] - 10:4, 51:4 context [1] - 13:6 continue [5] - 53:20, 53:23, 57:22, 78:22, 94:3 Continued [1] - 2:1 continued [3] - 3:1, 43:6, 44:3 continues [2] - 28:22, 57:9 continuing [3] - 17:4, 52:22, 94:6 contradict [1] - 50:19 contrary [1] - 22:8 control [6] - 24:25, 54:1, 68:8, 68:11, 80:19, 112:25 controlled [1] - 52:1 convenience [6] - 49:9, 49:14, 69:15, 73:13, 119:19 CORP [1] - 1:3 Corp [1] - 1:22 corporate [12] - 13:6, 14:25, 26:1, 26:21, 27:7, 30:12, 35:22, 36:6, 39:20, 39:22, 57:18, 63:18 corporation [1] - 65:4 Corporation [2] - 2:14, 6:17 correct [6] - 33:8, 33:16, 94:19, 94:20, 98:13, 116:10 correctly [3] - 75:9, 75:14, 117:5 corruption [1] - 47:25 cost [1] - 75:23 Counsel [4] - 1:21, 2:13, 2:23, 3:5 counsel [11] - 2:7, 4:4, 43:11, 48:21, 49:19, 55:1, 55:21, 100:7, 101:10, 107:2, 114:2 countries [1] - 58:13 country [7] - 12:23, 12:25, 15:5, 51:22, 51:23, 87:18 couple [5] - 58:4, 94:25, 95:18, 104:21, 111:25 course [19] - 8:6, 9:24, 11:11, 13:20, 25:10, 31:12, 34:25, 51:16, 54:25, 62:9, 64:12, 64:16, 65:9, 67:6,</p>	<p>70:24, 72:15, 94:4, 98:5, 116:20 courses [1] - 13:10 Court [173] - 1:25, 9:17, 12:16, 13:21, 14:8, 16:4, 26:3, 26:18, 27:1, 27:12, 27:18, 28:2, 28:8, 28:10, 28:19, 29:2, 29:9, 29:12, 29:16, 29:19, 30:3, 30:9, 31:21, 32:9, 34:1, 34:21, 34:24, 35:6, 35:8, 36:10, 38:7, 38:12, 38:13, 38:22, 38:24, 39:3, 39:21, 39:25, 40:14, 40:19, 40:20, 41:14, 42:14, 43:1, 46:8, 49:2, 50:1, 50:17, 50:21, 52:10, 54:22, 55:4, 56:9, 56:11, 57:1, 57:4, 57:7, 57:21, 58:25, 60:14, 62:1, 62:2, 62:4, 62:11, 62:15, 62:16, 63:18, 63:23, 64:9, 64:10, 65:7, 65:12, 66:13, 67:23, 67:25, 69:5, 69:6, 70:7, 70:24, 71:1, 71:23, 72:3, 72:17, 73:11, 73:14, 73:15, 73:18, 74:11, 74:13, 75:10, 75:16, 76:17, 76:19, 76:20, 76:24, 77:2, 77:9, 79:24, 80:15, 80:20, 80:21, 82:12, 82:17, 82:21, 83:5, 83:8, 83:10, 83:14, 83:18, 85:14, 86:18, 86:22, 87:1, 88:2, 88:16, 88:24, 89:3, 89:16, 90:12, 90:15, 91:9, 91:16, 91:22, 92:9, 92:20, 93:1, 93:2, 94:8, 94:9, 95:6, 95:21, 96:19, 96:20, 96:21, 98:22, 99:1, 102:1, 103:3, 103:6, 104:8, 104:15, 104:23, 105:6, 106:8, 106:24, 107:3, 108:14, 108:17, 109:1, 110:20, 111:10, 111:16, 111:19, 112:6, 112:11, 113:18, 115:3, 115:8, 115:22, 116:16, 116:18, 116:25, 117:13,</p>	<p>117:14, 117:24, 119:17, 122:9, 122:10 COURT [91] - 1:1, 3:22, 4:7, 4:17, 4:20, 5:7, 5:11, 5:16, 6:5, 6:11, 8:17, 13:22, 17:1, 18:16, 19:3, 19:6, 19:11, 19:17, 21:9, 23:9, 25:1, 32:25, 34:11, 35:11, 36:12, 36:23, 40:4, 40:21, 40:25, 41:5, 43:20, 45:20, 46:20, 48:12, 56:3, 59:17, 60:20, 60:23, 61:1, 63:3, 63:7, 63:14, 75:5, 77:17, 78:2, 78:14, 78:25, 79:7, 79:21, 80:25, 81:16, 82:25, 83:22, 85:16, 85:23, 93:6, 94:11, 96:23, 97:11, 97:13, 97:17, 98:6, 99:3, 99:11, 99:14, 99:17, 99:22, 100:2, 100:9, 100:17, 100:20, 100:22, 101:11, 101:18, 104:21, 105:12, 105:18, 107:7, 109:17, 110:7, 110:11, 110:15, 111:24, 113:22, 117:1, 118:2, 118:5, 119:2, 120:8, 121:20, 121:23 court [23] - 6:15, 8:6, 12:9, 15:22, 16:22, 17:22, 18:25, 19:25, 20:6, 20:8, 22:25, 51:13, 53:5, 55:24, 60:1, 69:13, 74:9, 81:10, 87:20, 87:21, 91:3, 111:2 Court's [19] - 5:24, 6:1, 28:4, 29:8, 41:23, 42:3, 47:22, 49:23, 58:9, 72:1, 73:13, 75:2, 91:25, 98:3, 99:8, 106:8, 107:1, 113:17, 117:6 court-appointed [1] - 111:2 courthouse [2] - 54:17, 109:4 courts [20] - 10:23, 12:24, 13:3, 13:8, 15:18, 16:18, 18:10, 26:16, 27:25, 41:12, 41:20, 43:8, 47:10, 53:20, 53:21, 53:25,</p>
---	---	--	--	---

54:4, 55:10, 64:7, 102:19 cover ^[2] - 8:14, 15:3 covered ^[2] - 10:25, 54:7 COVID ^[3] - 65:24, 66:8, 66:25 Craig ^[1] - 4:3 CRAIG ^[1] - 1:14 create ^[4] - 39:1, 82:15, 93:21, 111:13 created ^[2] - 36:7, 111:12 credence ^[2] - 35:21, 117:14 credibility ^[2] - 31:16, 42:18 credible ^[1] - 29:12 credited ^[1] - 66:22 creditor ^[4] - 20:17, 20:19, 49:3, 106:12 creditors ^[4] - 47:24, 84:17, 106:18, 116:12 cries ^[1] - 53:13 critical ^[1] - 111:1 criticisms ^[1] - 81:16 criticize ^[1] - 70:14 CRUTCHER ^[2] - 1:16, 1:19 Crutcher ^[1] - 4:5 CRYSTALLEX ^[1] - 1:3 Crystalex ^[64] - 1:21, 3:24, 4:2, 6:16, 7:2, 7:12, 8:11, 29:1, 29:3, 33:1, 38:1, 38:23, 39:10, 39:25, 42:25, 43:12, 45:7, 47:12, 56:10, 56:16, 59:1, 59:2, 59:20, 62:3, 62:4, 62:8, 63:10, 73:23, 74:7, 86:5, 87:6, 87:11, 88:5, 88:13, 88:17, 88:24, 88:25, 89:9, 89:17, 90:1, 90:21, 92:23, 93:9, 94:21, 102:11, 102:14, 103:13, 103:18, 104:6, 104:8, 104:16, 105:4, 105:10, 106:14, 106:19, 109:13, 110:3, 117:21, 118:18, 118:22, 119:3, 121:3, 121:14 Crystalex's ^[8] - 18:18, 18:24, 43:3, 46:24, 75:10, 81:21, 88:8, 104:2	curated ^[1] - 43:10 current ^[4] - 31:16, 53:7, 60:8, 117:13 cycle ^[1] - 72:11 D D.C ^[1] - 76:14 damage ^[3] - 16:9, 31:16, 42:17 damages ^[1] - 104:12 damaging ^[1] - 47:12 dataroom ^[9] - 65:21, 74:21, 74:23, 76:10, 82:22, 83:9, 83:11, 114:20, 116:19 date ^[37] - 18:20, 18:23, 18:24, 19:1, 19:12, 19:17, 19:20, 20:12, 20:13, 21:12, 22:21, 23:7, 23:11, 24:14, 29:23, 30:1, 34:12, 34:18, 35:13, 35:16, 49:12, 49:16, 63:22, 64:19, 66:2, 73:12, 73:15, 74:3, 83:11, 84:5, 86:15, 93:20, 95:10, 103:9, 104:3, 106:23, 114:21 dates ^[5] - 19:19, 20:5, 21:12, 23:6, 49:8 daylight ^[1] - 110:17 days ^[2] - 63:21, 96:7 deadbeat ^[3] - 16:14, 31:24, 59:4 deal ^[10] - 8:24, 9:7, 9:11, 48:20, 59:6, 67:20, 68:3, 74:2, 78:9, 78:11 dealing ^[2] - 72:22, 79:20 deals ^[2] - 114:8, 114:17 death ^[1] - 116:22 debate ^[1] - 108:16 debated ^[1] - 32:14 debt ^[6] - 90:22, 90:24, 98:9, 98:16, 98:22 debtor ^[19] - 16:15, 19:23, 20:10, 20:20, 23:4, 37:25, 49:4, 49:18, 70:10, 70:11, 90:17, 91:5, 91:10, 97:22, 97:25, 112:21 debtors ^[3] - 64:1, 75:17, 76:2 decade ^[2] - 12:23, 53:12 decades ^[2] - 12:3,	48:22 December ^[1] - 76:16 decide ^[8] - 35:14, 38:12, 38:13, 44:18, 47:6, 74:4, 102:1, 105:23 decided ^[7] - 37:8, 37:9, 38:8, 38:24, 81:20, 88:18, 103:5 deciding ^[3] - 37:15, 38:23, 103:7 decision ^[16] - 7:9, 33:11, 34:14, 39:12, 41:24, 46:25, 47:15, 48:7, 58:1, 79:9, 88:15, 94:13, 105:21, 106:8, 106:10, 108:2 decisions ^[1] - 107:15 declarations ^[2] - 25:22, 26:25 decree ^[1] - 114:13 deemed ^[1] - 56:25 Defendant ^[1] - 1:7 defendant's ^[1] - 39:19 defer ^[1] - 86:23 deference ^[19] - 15:25, 16:1, 41:14, 43:16, 102:6, 102:8, 102:14, 102:20, 102:22, 115:3, 115:5, 115:6, 115:10, 115:20, 117:5, 117:13, 119:9, 119:19, 120:2 defined ^[1] - 92:5 definitely ^[1] - 81:8 Deibler ^[14] - 63:23, 64:9, 65:1, 70:7, 70:9, 75:16, 75:17, 83:8, 83:14, 90:12, 91:3, 112:6 DELAWARE ^[1] - 1:2 Delaware ^[39] - 1:8, 37:21, 37:23, 38:16, 38:20, 39:5, 39:6, 39:11, 39:18, 63:23, 64:4, 64:9, 65:6, 67:3, 69:5, 69:7, 69:13, 70:25, 71:1, 71:19, 72:22, 74:17, 79:23, 83:8, 84:6, 91:13, 91:17, 91:21, 92:2, 93:9, 106:19, 109:1, 109:5, 112:6, 112:10, 120:21 delay ^[4] - 73:23, 78:4, 78:20, 82:24 delaying ^[1] - 76:11 demonstrated ^[1] -	35:2 demonstrates ^[1] - 66:8 demonstration ^[4] - 11:6, 13:14, 16:21, 16:23 DeMott ^[19] - 3:3, 5:13, 5:14, 41:3, 41:6, 44:22, 46:2, 47:7, 63:4, 63:5, 101:6, 101:7, 101:13, 101:14, 101:20, 101:24, 105:1, 118:6, 118:7 denied ^[2] - 52:11, 77:2 denies ^[2] - 103:3, 104:10 dent ^[1] - 24:23 deny ^[3] - 103:5, 103:22, 116:22 Department ^[4] - 5:14, 16:13, 17:15, 31:2 DEPARTMENT ^[1] - 3:3 Department's ^[1] - 60:4 dependent ^[2] - 56:21, 57:11 deposit ^[2] - 67:6, 67:15 describe ^[1] - 31:1 described ^[2] - 28:11, 44:6 desegregation ^[1] - 50:15 designed ^[1] - 86:10 designing ^[2] - 86:19, 92:14 despite ^[1] - 66:7 destabilizing ^[1] - 58:12 detail ^[1] - 52:21 details ^[2] - 42:16, 45:11 determination ^[3] - 23:16, 60:11, 106:4 determined ^[4] - 12:25, 85:11, 91:2 determining ^[2] - 37:19, 73:19 detrimental ^[2] - 45:16, 102:12 develop ^[1] - 115:21 developed ^[1] - 46:10 developing ^[1] - 46:11 developments ^[1] - 47:19 dialogue ^[1] - 109:19 dictate ^[2] - 27:22, 95:7	dictation ^[1] - 13:8 difference ^[2] - 44:17, 81:15 different ^[17] - 12:9, 18:23, 19:12, 23:16, 30:11, 33:24, 35:15, 44:8, 46:6, 48:6, 49:5, 51:7, 59:21, 64:14, 81:4, 81:14, 99:1 differently ^[1] - 23:16 difficult ^[1] - 47:14 difficulties ^[1] - 120:14 difficulty ^[1] - 37:5 diligent ^[3] - 74:8, 84:17, 85:12 direct ^[5] - 29:11, 44:23, 45:10, 45:18, 81:25 directing ^[2] - 85:3, 121:2 directly ^[1] - 57:15 Director ^[3] - 48:7, 103:25, 105:9 director ^[2] - 47:17, 110:2 disagree ^[2] - 28:1, 117:8 disappeared ^[1] - 55:21 disclaiming ^[1] - 17:22 discourage ^[1] - 67:8 discovery ^[2] - 83:1, 83:13 discretion ^[16] - 6:1, 79:22, 79:25, 80:4, 80:7, 81:4, 86:18, 86:21, 93:1, 102:1, 103:21, 111:10, 111:12, 111:21, 112:7, 112:8 discuss ^[1] - 107:2 discussed ^[3] - 9:9, 29:8, 61:5 discussing ^[1] - 109:15 discussion ^[5] - 6:21, 32:18, 37:4, 88:2, 94:12 discussions ^[1] - 96:2 dismissal ^[1] - 102:23 disparage ^[1] - 51:5 disparaged ^[1] - 27:14 dispense ^[1] - 55:11 disposed ^[1] - 55:23 dispositive ^[4] - 29:19, 40:9, 40:10, 60:12 dispute ^[10] - 13:12,
---	--	--	--	--

56:9, 80:3, 80:6, 81:1, 82:15, 83:2, 96:23, 108:23, 109:6 disputed [2] - 51:7, 51:9 disputes [3] - 102:1, 102:3, 118:20 disputing [1] - 102:14 disregarding [1] - 36:6 disrupt [1] - 67:9 disseminate [1] - 75:19 dissociated [1] - 24:5 dissolve [2] - 47:22, 103:4 distinction [15] - 21:17, 21:19, 21:22, 21:23, 22:2, 22:12, 22:16, 22:17, 23:10, 24:19, 24:22, 43:23, 45:2, 105:2, 114:5 distinctions [2] - 44:16, 44:17 DISTRICT [2] - 1:1, 1:2 district [1] - 95:15 District [7] - 1:20, 2:6, 3:4, 19:25, 29:12, 48:4, 122:10 disturb [1] - 76:17 divergence [1] - 17:21 diverse [1] - 66:4 division [1] - 42:9 docket [2] - 49:23, 55:22 doctrine [2] - 21:13, 119:8 doctrines [2] - 15:19, 15:20 documented [1] - 26:25 documents [1] - 97:24 DOJ [1] - 42:6 dollars [1] - 95:18 Don [2] - 4:14, 25:4 DONALD [1] - 2:5 done [18] - 12:25, 26:8, 34:14, 50:19, 53:12, 65:2, 72:13, 72:18, 73:1, 74:18, 84:18, 84:20, 95:22, 96:7, 98:14, 98:16, 114:8, 120:9 doubt [4] - 24:13, 27:5, 53:3, 70:20 doubts [1] - 60:18 down [6] - 28:23, 64:19, 67:14, 68:18, 79:15, 93:3 downside [1] - 112:12 dramatic [1] - 35:5	dramatically [2] - 41:22, 57:14 draw [1] - 105:2 drawn [1] - 93:9 due [4] - 20:3, 64:1, 65:7, 75:25 duly [1] - 88:11 DUNN [2] - 1:16, 1:19 Dunn [2] - 4:5, 8:23 duration [1] - 18:4 during [2] - 55:14, 72:16	11:13, 11:16, 11:19, 11:22, 29:1, 40:5, 50:3, 51:20, 52:7, 71:24, 92:12, 106:20, 108:9 elaborate [1] - 27:9 elaboration [1] - 52:20 elements [2] - 107:3, 109:14 eliminate [1] - 33:14 eliminating [1] - 120:13 Elliott [1] - 42:12 elsewhere [1] - 117:19 embracing [1] - 10:12 emphasized [1] - 120:22 employed [1] - 69:2 employees [1] - 96:3 en [2] - 50:12, 119:22 enacted [4] - 26:22, 35:23, 57:17 enacting [1] - 27:23 encompasses [1] - 80:9 encountered [1] - 120:14 end [7] - 17:5, 18:5, 61:4, 100:14, 101:3, 105:24, 107:1 ended [1] - 96:9 endlessly [1] - 50:25 ends [2] - 15:12, 122:5 enforced [2] - 13:5, 27:24 enforcement [4] - 16:17, 28:9, 114:12, 119:16 engaging [2] - 22:18, 32:1 enormous [3] - 59:7, 73:2, 81:15 enormously [2] - 82:24, 95:25 ensue [1] - 31:15 ensure [3] - 25:25, 67:16, 84:17 entered [2] - 35:6, 94:9 enterprise [1] - 96:1 enters [2] - 34:24, 35:8 entire [1] - 21:4 entirely [1] - 57:12 entities [1] - 39:8 entitled [9] - 22:10, 43:15, 49:14, 53:23, 54:15, 87:19, 115:2, 115:19, 120:2 enuniated [1] - 90:1 environment [1] - 66:7	envision [1] - 7:21 envisioning [1] - 107:22 equitable [5] - 10:19, 11:14, 53:24, 72:3, 84:19 equity [1] - 10:23 equivalent [1] - 64:12 especially [3] - 12:4, 53:10, 114:2 ESQ [12] - 1:14, 1:14, 1:17, 1:20, 2:3, 2:5, 2:9, 2:12, 2:16, 2:18, 2:21, 3:3 essentially [8] - 37:9, 82:10, 84:25, 95:2, 98:20, 115:24, 116:1, 121:8 establish [4] - 21:3, 22:9, 22:23, 104:23 established [9] - 12:13, 15:16, 20:11, 20:20, 24:2, 27:10, 30:13, 54:11, 64:11 establishing [7] - 22:3, 22:4, 22:5, 30:21, 31:10, 89:22, 117:22 establishment [2] - 26:20, 27:10 estopped [2] - 55:19, 62:23 estoppel [5] - 37:11, 39:24, 61:6, 61:14, 61:25 Estrada [30] - 4:4, 8:18, 8:23, 19:3, 25:8, 25:12, 26:4, 31:3, 31:22, 34:5, 41:8, 42:25, 43:6, 48:16, 48:18, 56:4, 58:7, 61:4, 61:13, 61:17, 61:23, 87:16, 112:3, 113:21, 113:22, 113:25, 117:4, 117:8, 117:20, 118:19 ESTRADA [17] - 1:20, 4:6, 8:15, 8:19, 14:19, 17:10, 19:2, 19:4, 19:9, 19:16, 19:18, 21:19, 23:21, 48:17, 113:23, 118:4, 119:5 Estrada's [3] - 38:3, 42:4, 118:10 et [1] - 85:19 eternal [1] - 55:9 evade [1] - 53:21 evading [1] - 54:4 evaluate [4] - 43:8,	47:5, 69:17, 121:13 event [2] - 12:11, 102:18 events [6] - 20:16, 24:7, 24:20, 29:13, 29:14, 30:7 eventually [2] - 57:6, 116:7 evidence [5] - 14:25, 24:11, 25:19, 26:6, 48:19 evident [1] - 31:12 evidently [1] - 31:20 evolving [1] - 46:5 exactly [7] - 40:13, 62:13, 63:1, 90:17, 103:10, 118:17, 119:24 example [2] - 16:4, 51:12 exception [4] - 28:2, 28:9, 57:9, 57:11 excerpts [1] - 16:8 exclusively [1] - 62:24 excuse [6] - 12:12, 21:23, 22:18, 50:10, 64:23, 100:18 execution [14] - 62:12, 81:2, 81:3, 81:8, 81:12, 91:18, 95:14, 96:24, 98:21, 108:1, 108:23, 109:23, 112:24, 112:25 Executive [1] - 105:8 executive [16] - 12:8, 12:17, 13:3, 13:13, 17:11, 17:16, 17:17, 17:23, 18:14, 26:16, 33:4, 33:6, 41:10, 41:18, 53:1, 88:7 executor [1] - 13:9 exemption [1] - 28:21 exercise [6] - 28:5, 57:4, 57:22, 79:25, 86:8, 86:10 exercise-designed [1] - 86:10 exercising [2] - 86:21, 93:1 exhausted [1] - 85:8 Exhibit [2] - 42:14, 47:17 exist [1] - 34:24 existing [2] - 11:7, 93:22 expand [1] - 29:12 expanded [1] - 95:3 expect [7] - 6:6, 46:25, 55:20, 83:21, 85:18, 98:5, 116:7 expected [1] - 104:4
---	---	--	--	--

expeditiously [1] - 104:8 expenses [1] - 107:22 experience [1] - 116:10 experiencing [1] - 56:16 expert [1] - 80:5 expertise [1] - 110:23 experts [1] - 107:23 expire [1] - 89:7 expires [1] - 89:5 explain [2] - 31:8, 102:19 explained [5] - 30:25, 41:16, 52:3, 103:25, 117:12 explains [1] - 52:7 explanation [3] - 31:14, 49:2, 65:4 explanatory [1] - 115:22 explored [1] - 79:15 express [4] - 9:22, 42:3, 47:3, 106:10 expressed [4] - 43:1, 102:8, 102:20, 103:7 expressing [2] - 10:10, 42:10 expressly [2] - 62:2, 90:13 expropriated [1] - 18:24 expropriation [2] - 11:11, 20:25 extend [5] - 72:6, 75:20, 84:2, 85:2, 85:5 extended [2] - 96:17, 96:18 extendible [1] - 72:7 extending [1] - 72:23 extensive [2] - 23:7, 71:21 extensively [1] - 72:9 extent [4] - 14:7, 39:24, 51:10, 102:13 extra [1] - 69:1 extraordinary [7] - 11:6, 26:10, 32:11, 32:13, 35:1, 35:3, 87:8 extrapolate [1] - 68:23 extreme [1] - 11:6 eyes [1] - 31:17	98:3 fact [32] - 14:9, 15:24, 21:3, 24:7, 24:10, 24:22, 24:23, 26:23, 27:11, 30:11, 30:21, 32:12, 33:23, 38:9, 39:11, 39:21, 49:22, 55:9, 56:10, 57:13, 57:17, 58:20, 61:10, 62:18, 68:1, 69:24, 77:15, 85:7, 87:7, 93:19, 96:12 fact-specific [1] - 58:20 factor [1] - 107:16 factors [3] - 34:5, 47:15, 60:10 facts [6] - 20:24, 34:23, 51:17, 52:9, 57:20, 57:22 factual [2] - 41:16, 52:21 factually [1] - 55:10 fail [1] - 53:23 failed [1] - 50:2 fair [5] - 7:21, 49:25, 66:10, 69:14, 94:24 fair-the-well [1] - 49:25 fairly [2] - 48:23, 96:12 faith [2] - 67:6, 67:15 fall [3] - 51:16, 73:15, 119:14 familiar [2] - 95:12, 95:21 fancy [1] - 85:1 FAQ [3] - 115:9, 115:16, 117:12 FAQs [4] - 105:2, 105:9, 113:5, 114:22 far [4] - 68:14, 69:23, 105:22, 118:17 fault [2] - 74:14, 84:13 favor [2] - 38:23, 93:3 features [1] - 107:3 February [1] - 76:15 federal [5] - 8:6, 26:16, 53:5, 55:24, 109:1 feedback [1] - 121:13 fees [2] - 108:19, 109:8 fetch [1] - 109:11 few [6] - 25:6, 41:7, 56:6, 100:13, 107:9, 120:10 fiduciary [1] - 92:6 fight [2] - 16:6, 21:20 fighting [1] - 54:19 figure [2] - 79:19, 100:14	file [5] - 21:21, 21:24, 51:13, 85:9, 121:2 filed [17] - 9:22, 9:23, 12:12, 14:5, 17:2, 19:20, 20:2, 21:5, 22:25, 29:1, 48:3, 49:13, 49:23, 78:21, 85:11 filings [6] - 36:17, 41:16, 42:8, 43:3, 43:24, 47:9 final [12] - 10:19, 10:24, 11:16, 12:5, 12:10, 16:16, 35:1, 45:13, 49:23, 50:5, 51:18, 52:9 finally [4] - 42:23, 52:12, 58:22, 84:24 financial [4] - 65:13, 65:16, 65:19, 66:2 fine [3] - 80:24, 95:5, 95:8 FINGER [1] - 1:13 firm [3] - 4:3, 10:10, 48:10 firmly [1] - 113:20 First [5] - 50:10, 50:12, 50:14, 50:19, 50:23 first [19] - 7:2, 25:12, 26:11, 37:7, 37:12, 38:18, 40:2, 40:10, 41:9, 41:18, 45:1, 46:7, 56:8, 63:10, 73:7, 86:22, 92:1, 115:10, 120:11 five [6] - 58:12, 69:11, 107:9, 107:13, 108:7, 110:24 flat [3] - 55:4, 55:17, 83:16 flexible [1] - 75:24 floor [1] - 8:10 fluid [1] - 33:4 focus [3] - 7:8, 48:15, 91:11 focused [2] - 60:13, 63:9 foisting [1] - 9:17 folks [1] - 85:18 follow [15] - 7:11, 13:9, 13:10, 13:24, 29:9, 52:14, 64:4, 64:8, 64:10, 70:25, 74:17, 81:23, 82:4, 104:24, 111:19 follow-up [2] - 13:24, 52:14 followed [1] - 112:10 following [2] - 3:20, 112:17	Following [1] - 63:24 follows [2] - 19:22, 111:19 foothold [1] - 58:15 footnote [1] - 24:10 FOR [1] - 1:2 forbid [1] - 19:10 forbidden [1] - 115:17 force [1] - 61:21 forced [6] - 42:17, 45:7, 64:13, 77:11, 77:12 foregoing [1] - 122:7 foreign [30] - 13:25, 15:9, 18:9, 26:17, 27:10, 27:21, 28:3, 28:4, 30:23, 31:24, 41:15, 43:1, 43:9, 43:12, 44:9, 44:25, 46:16, 51:22, 60:8, 87:12, 87:19, 88:6, 88:19, 92:18, 102:6, 102:21, 103:12, 103:17, 104:11, 118:24 forever [3] - 96:6, 96:19, 116:1 forgotten [1] - 95:17 form [3] - 10:18, 39:20, 39:22 formal [1] - 103:17 former [1] - 21:16 forte [1] - 8:21 forth [11] - 43:13, 63:25, 68:24, 69:7, 69:11, 69:12, 74:17, 82:23, 112:9, 112:16, 116:16 forthcoming [1] - 110:5 forum [1] - 39:23 forward [32] - 46:17, 67:22, 68:4, 73:18, 73:25, 84:14, 87:8, 87:23, 88:13, 88:25, 89:24, 91:8, 97:10, 97:23, 101:15, 102:9, 102:11, 103:8, 103:14, 103:18, 103:20, 104:7, 104:9, 104:15, 105:6, 106:8, 106:17, 108:14, 112:7, 114:12, 118:25, 121:14 founded [1] - 23:1 four [2] - 104:3, 107:11 frame [1] - 35:10 frankly [1] - 31:21	fraud [6] - 38:24, 39:2, 39:8, 39:19, 39:22, 40:1 free [5] - 27:25, 32:9, 67:17, 75:17, 111:20 free-wheeling [2] - 27:25, 32:9 frequently [1] - 114:23 friend [13] - 25:12, 26:13, 27:15, 27:19, 29:16, 29:21, 31:22, 32:3, 33:19, 34:5, 58:6, 59:13, 95:23 friends [1] - 35:20 front [6] - 14:11, 18:19, 53:21, 56:1, 73:9, 120:17 frozen [5] - 29:1, 29:5, 33:16, 34:19, 48:23 fruitless [1] - 86:9 FSIA [15] - 12:13, 27:23, 28:3, 37:10, 37:16, 38:12, 38:14, 40:13, 40:14, 54:12, 54:16, 57:2, 57:8, 57:23, 85:1 full [4] - 21:5, 46:10, 66:15, 66:18 fullest [1] - 75:22 fully [5] - 18:18, 54:9, 79:14, 79:24, 88:20 function [1] - 77:15 fundamental [1] - 41:24 funds [2] - 53:18, 66:6 future [3] - 30:10, 33:24, 103:25
G				
Gacki [3] - 47:16, 48:7, 104:1 Gacki's [1] - 105:9 Gaffigan [2] - 1:24, 122:9 gain [1] - 68:8 game [1] - 7:21 garnish [1] - 56:13 garnishment [5] - 28:11, 30:4, 56:17, 56:20, 56:24 GARRETT [1] - 2:16 Garrett [1] - 5:20 Gas [1] - 65:11 gathers [1] - 27:11 gavel [2] - 64:19, 68:18 general [6] - 16:12, 17:12, 26:22, 36:1, 36:4, 42:9 General [2] - 3:4,				
F				
faces [1] - 59:4 facilitate [2] - 89:18,				

<p>26:23 generalized [1] - 28:19 generally [1] - 80:6 genuinely [1] - 76:4 geographic [3] - 23:12, 35:14, 36:9 germane [1] - 16:24 GIBSON [2] - 1:16, 1:19 Gibson [2] - 4:4, 8:23 given [17] - 6:20, 16:20, 20:14, 34:9, 35:22, 57:11, 73:4, 78:23, 88:22, 89:3, 97:9, 106:21, 107:4, 113:10, 115:10, 116:10, 116:21 glad [1] - 36:22 global [1] - 66:8 God [2] - 19:9, 77:6 gold [1] - 39:16 govern [1] - 16:22 governance [1] - 24:2 governed [1] - 54:12 governing [1] - 115:18 government [69] - 9:25, 11:18, 13:17, 14:5, 14:7, 14:16, 14:22, 15:4, 15:20, 15:23, 16:1, 16:4, 17:3, 17:8, 17:22, 24:12, 25:14, 25:15, 25:16, 25:24, 25:25, 26:5, 26:12, 26:15, 30:11, 31:4, 31:16, 31:19, 31:23, 33:18, 34:3, 41:1, 41:19, 42:18, 43:5, 43:24, 43:25, 44:1, 44:8, 45:25, 46:6, 46:12, 46:17, 51:8, 51:14, 51:24, 52:9, 52:17, 53:17, 57:16, 57:17, 58:8, 60:17, 87:15, 87:17, 87:18, 87:22, 87:23, 88:23, 92:20, 100:25, 106:15, 112:3, 114:2, 114:7, 115:7, 119:13, 119:25 Government [4] - 33:17, 33:21, 43:15, 53:17 Government's [1] - 107:4 government's [14] - 9:2, 9:10, 9:19, 11:17, 13:23, 43:9, 44:19, 45:17, 47:10, 51:4, 60:5, 102:18,</p>	<p>102:20, 104:22 governs [1] - 54:13 grant [8] - 41:14, 57:8, 59:20, 59:24, 103:22, 103:23, 109:25 granted [10] - 4:18, 5:8, 20:3, 20:13, 21:6, 23:3, 40:3, 69:3, 89:13, 89:14 grateful [2] - 43:25, 44:2 gratified [1] - 113:16 grave [1] - 32:4 great [8] - 44:21, 48:20, 52:3, 60:18, 76:25, 85:23, 90:12, 112:14 GREEN [12] - 2:18, 99:6, 99:13, 99:16, 99:20, 99:25, 100:6, 105:16, 105:19, 108:10, 109:18, 110:13 green [7] - 99:11, 99:15, 99:24, 100:13, 107:8, 108:9, 110:11 Green [5] - 5:21, 5:24, 99:6, 99:17, 105:14 grievously [2] - 31:16, 42:17 ground [5] - 26:24, 35:21, 46:5, 106:15, 108:13 grounded [1] - 53:10 grounds [3] - 62:10, 62:16, 63:1 group [2] - 66:5, 87:3 Guaidó [24] - 11:24, 12:2, 17:5, 24:1, 25:14, 25:15, 25:16, 25:24, 26:5, 26:12, 31:19, 31:23, 33:18, 34:2, 41:19, 42:18, 51:5, 51:13, 51:14, 52:22, 53:16, 55:3, 87:16 Guaidó's [1] - 43:3 guess [6] - 34:14, 43:1, 45:20, 93:8, 98:14, 113:12 Gulf [1] - 2:24</p>	<p>104:2, 104:16 hands [4] - 64:21, 80:11, 97:25, 112:20 happy [9] - 9:3, 13:20, 32:23, 70:23, 77:25, 104:19, 108:12, 115:21, 116:8 hardship [2] - 11:7, 11:8 harm [8] - 87:12, 88:25, 90:2, 93:19, 93:21, 117:21, 118:18, 121:15 harmed [2] - 89:3, 89:4 Harrison [1] - 39:12 hat [1] - 24:1 head [3] - 17:11, 18:14, 53:1 health [1] - 67:4 healthy [1] - 122:1 hear [27] - 3:23, 4:8, 7:2, 7:10, 7:12, 8:16, 8:17, 9:20, 19:4, 19:6, 41:4, 41:5, 63:10, 63:13, 79:13, 85:18, 90:8, 95:9, 98:10, 99:25, 100:1, 101:20, 102:16, 105:17, 108:12, 110:15 heard [10] - 6:7, 7:5, 7:14, 25:7, 36:17, 49:1, 52:6, 52:15, 93:25, 98:7 hearing [20] - 5:23, 8:25, 9:5, 9:12, 10:9, 13:13, 13:24, 28:25, 34:16, 44:3, 45:6, 55:22, 59:22, 61:13, 72:8, 73:14, 101:8, 101:11, 101:18, 119:22 hearings [1] - 32:13 heavily [1] - 60:10 held [5] - 3:21, 20:19, 65:7, 69:6, 90:14 help [11] - 44:20, 45:24, 53:24, 73:21, 74:24, 80:5, 80:23, 81:18, 83:19, 112:13 helpful [5] - 8:2, 9:16, 13:18, 105:23, 120:12 Hemisphere [1] - 58:15 hereby [1] - 122:7 Hi [1] - 99:6 high [2] - 53:3, 116:23 highest [4] - 31:6, 68:3, 76:4, 109:12</p>	<p>highlight [2] - 50:8, 114:4 hire [2] - 68:14, 107:24 hiring [2] - 71:6, 76:7 HIRZEL [1] - 4:25 Hirzel [1] - 5:1 historical [2] - 21:3, 51:17 historically [1] - 21:1 history [3] - 21:4, 86:4, 119:21 hoc [2] - 12:5, 12:14 hold [4] - 41:25, 53:6, 56:12, 118:5 Holding [9] - 2:13, 5:2, 5:6, 38:5, 61:10, 61:19, 62:5, 62:17, 62:19 Holdings [1] - 2:13 homework [1] - 120:19 Honor [100] - 4:1, 4:6, 4:12, 4:19, 4:23, 4:25, 5:9, 5:13, 5:19, 6:4, 8:15, 15:16, 23:25, 25:3, 25:10, 28:23, 30:16, 30:18, 32:23, 34:20, 35:19, 36:18, 36:21, 37:1, 37:6, 37:8, 41:3, 41:7, 43:18, 44:22, 46:2, 47:7, 48:2, 48:17, 56:6, 60:3, 60:24, 61:6, 61:13, 63:2, 63:6, 63:12, 64:3, 65:12, 65:14, 71:10, 71:13, 72:15, 72:25, 73:7, 73:16, 74:2, 74:16, 78:7, 78:22, 79:3, 79:14, 81:6, 82:6, 82:19, 83:4, 83:5, 84:9, 84:21, 85:20, 85:25, 88:10, 89:6, 89:16, 92:13, 93:25, 95:12, 95:21, 97:5, 100:11, 101:7, 101:14, 101:24, 102:10, 103:4, 104:20, 105:1, 105:4, 105:5, 105:20, 110:14, 111:2, 111:8, 112:5, 113:13, 113:23, 113:24, 118:1, 118:4, 119:5, 121:19, 122:4 Honor's [8] - 4:15, 5:5, 25:9, 29:25, 34:6, 37:15, 62:8, 76:16 HONORABLE [1] - 1:11</p>	<p>hope [4] - 3:23, 9:16, 78:10, 116:24 hopeful [1] - 79:17 hopefully [2] - 74:2, 100:13 horrible [1] - 12:25 horse's [1] - 17:17 hostile [1] - 58:14 huge [1] - 70:5 hundred [1] - 95:18 hypothetical [1] - 86:19 hypothetically [1] - 18:12</p>
				I
				<p>idea [2] - 27:14, 42:21 ideas [1] - 45:2 identified [3] - 28:13, 34:6 identify [3] - 8:3, 8:20, 49:8 ignore [1] - 57:22 illuminating [1] - 49:12 image [3] - 15:8, 18:8, 105:21 imagine [2] - 31:24, 65:14 immediate [2] - 40:12, 45:14 immediately [1] - 118:23 immunity [8] - 12:4, 12:6, 28:3, 28:22, 49:21, 49:24, 57:3, 57:9 impatient [1] - 96:20 imperil [4] - 14:2, 14:8, 103:12, 103:19 imperiled [4] - 44:12, 44:13, 44:14, 104:11 imperilling [1] - 118:24 implemented [6] - 26:23, 35:23, 35:24, 36:1, 36:3, 57:19 implicate [4] - 14:3, 16:18, 47:21, 88:6 implicated [3] - 16:14, 32:20, 45:24 implication [1] - 4:7 implications [7] - 14:17, 30:24, 31:11, 42:19, 46:16, 46:19, 121:12 imply [1] - 96:18 important [3] - 64:5, 64:8, 93:20</p>

<p>impose ^[1] - 21:13 imposing ^[2] - 22:19, 105:3 impossible ^[1] - 97:8 improperly ^[1] - 41:10 IN ^[2] - 1:1, 1:2 inability ^[1] - 117:23 inadequate ^[2] - 90:5, 90:10 inappropriate ^[4] - 42:1, 59:14, 86:11, 92:1 inaudible ^[1] - 5:3 Inc ^[2] - 2:13, 2:13 incentive ^[7] - 67:22, 83:15, 83:20, 91:5, 94:17, 94:20, 96:11 incentives ^[1] - 76:2 inclined ^[1] - 67:4 include ^[4] - 29:17, 47:18, 58:16, 69:8 included ^[1] - 60:5 including ^[3] - 18:2, 45:15, 79:8 inconsistent ^[3] - 29:21, 55:5, 55:17 incorporate ^[2] - 90:7 incorrect ^[1] - 36:7 incumbent ^[1] - 53:6 indeed ^[1] - 74:12 indefinite ^[1] - 115:24 independent ^[6] - 12:22, 12:24, 13:3, 15:24, 18:10, 24:2 independently ^[2] - 15:22, 43:8 indicate ^[3] - 41:21, 121:5, 121:6 indicated ^[5] - 28:23, 43:25, 47:16, 89:23, 92:17 indicates ^[1] - 48:8 indicating ^[1] - 60:6 indication ^[7] - 78:24, 86:6, 89:2, 89:4, 89:14, 111:20, 113:10 individual ^[1] - 81:20 indulgence ^[1] - 116:25 information ^[16] - 16:8, 59:23, 59:25, 65:22, 66:2, 70:11, 74:22, 74:24, 75:22, 76:1, 76:10, 83:7, 83:10, 83:15, 83:17, 83:19 informative ^[1] - 9:25 initial ^[1] - 99:8 injure ^[1] - 88:18 injured ^[2] - 115:25,</p>	<p>116:15 injurious ^[1] - 116:4 injury ^[3] - 87:23, 92:17, 92:21 injustice ^[3] - 12:25, 39:19, 53:13 input ^[3] - 46:12, 106:7, 120:18 inquiry ^[1] - 35:15 insistent ^[1] - 21:15 insofar ^[1] - 27:7 insolvency ^[1] - 116:6 insolvent ^[1] - 92:2 inspection ^[1] - 96:2 instance ^[1] - 80:4 instead ^[1] - 21:14 instruction ^[1] - 76:20 instrumentality ^[3] - 28:4, 39:1, 39:9 intelligent ^[1] - 58:17 intend ^[7] - 6:19, 7:11, 9:7, 9:8, 29:20, 44:15, 44:16 intended ^[5] - 9:12, 10:22, 100:12, 114:25, 120:1 intends ^[1] - 76:20 intentions ^[1] - 26:22 interaction ^[1] - 48:20 interagency ^[1] - 48:8 intercession ^[1] - 24:19 interest ^[57] - 5:25, 9:2, 9:19, 9:22, 9:25, 13:23, 14:5, 14:13, 14:21, 15:10, 15:14, 17:16, 18:2, 31:5, 32:19, 42:5, 42:15, 44:10, 46:11, 47:1, 47:3, 47:9, 48:3, 58:6, 59:11, 60:5, 60:9, 68:10, 69:4, 69:14, 69:15, 70:4, 75:20, 77:8, 77:10, 78:13, 81:21, 81:22, 82:3, 87:2, 87:15, 88:4, 88:12, 88:24, 92:17, 92:18, 93:2, 96:14, 97:22, 102:8, 102:20, 103:7, 107:5, 110:1, 114:14, 114:15, 118:13 interested ^[7] - 19:15, 46:12, 65:20, 67:4, 71:9, 80:2, 107:4 interesting ^[1] - 51:1 interests ^[19] - 14:1, 14:3, 27:21, 44:9, 44:11, 45:9, 46:6, 47:18, 52:21, 87:13,</p>	<p>87:14, 88:7, 88:21, 102:7, 103:12, 103:17, 103:19, 104:11, 118:24 interference ^[1] - 99:14 interfering ^[1] - 41:10 interim ^[3] - 23:1, 45:16, 92:24 INTERNATIONAL ^[1] - 1:3 International ^[2] - 1:22, 6:16 Internet ^[1] - 67:2 interpretation ^[5] - 10:3, 50:23, 117:15, 118:10, 119:12 interrupt ^[1] - 97:13 interrupted ^[3] - 37:5, 37:7, 37:13 interrupting ^[1] - 19:7 intervene ^[1] - 62:19 intervening ^[1] - 30:7 intervention ^[1] - 13:17 interviews ^[1] - 96:3 introduce ^[2] - 4:14, 107:2 introduced ^[2] - 25:19, 26:5 introduction ^[2] - 99:9 investment ^[3] - 71:6, 76:7, 110:25 investors ^[1] - 66:5 invitation ^[1] - 42:3 inviting ^[1] - 44:1 invocation ^[1] - 28:9 invoked ^[1] - 50:4 invoking ^[1] - 56:11 involve ^[3] - 73:2, 96:15, 96:17 involved ^[2] - 15:11, 15:12 involving ^[2] - 47:18, 48:4 Iran ^[1] - 58:14 irony ^[1] - 15:8 irrelevant ^[2] - 13:11, 29:15 Islands ^[1] - 50:6 issuance ^[1] - 54:20 issue ^[40] - 7:9, 14:11, 15:15, 16:2, 18:16, 19:8, 28:1, 29:19, 30:16, 31:20, 37:6, 37:8, 37:9, 37:17, 38:12, 40:2, 40:5, 54:14, 56:8, 65:15, 72:9, 72:13, 73:3, 74:1, 78:11, 82:1, 82:2, 82:16, 83:23,</p>	<p>93:24, 98:17, 101:9, 101:16, 102:7, 102:8, 102:15, 112:19, 113:15, 114:7, 117:24 issued ^[6] - 29:2, 50:18, 62:11, 71:23, 73:7, 119:21 issues ^[34] - 6:13, 6:25, 8:24, 9:1, 9:5, 9:8, 9:9, 9:11, 9:14, 10:7, 16:3, 16:24, 18:8, 19:5, 25:5, 32:4, 32:14, 47:6, 47:24, 48:14, 50:5, 54:1, 54:7, 54:10, 65:14, 85:10, 94:13, 94:14, 94:15, 96:25, 110:18, 114:2, 114:3, 114:6 issuing ^[2] - 60:19, 89:18 itself ^[10] - 26:7, 36:2, 39:4, 39:20, 76:12, 83:6, 88:18, 116:18, 117:10, 117:15</p>	<p>81:11, 109:21, 112:20, 114:13 Judgment ^[1] - 75:17 judgments ^[14] - 10:24, 12:4, 13:4, 13:9, 13:10, 35:1, 43:14, 50:6, 51:18, 53:20, 53:22, 54:4, 59:8, 59:10 judicata ^[1] - 50:24 Judicial ^[1] - 111:22 judicial ^[24] - 54:15, 61:5, 61:14, 61:25, 73:2, 80:13, 81:2, 81:3, 82:17, 85:15, 96:24, 98:4, 102:25, 108:1, 108:22, 109:23, 111:7, 111:11, 111:13, 111:21, 112:17, 112:23, 114:13, 119:15 judiciary ^[2] - 12:22, 41:11 July ^[3] - 6:14, 6:21, 6:22 jurisdiction ^[4] - 28:5, 28:22, 57:2, 57:23 jurisdictional ^[3] - 62:10, 62:15, 62:25 jury ^[1] - 68:22 jury-rigged ^[1] - 68:22 JUSTICE ^[1] - 3:3 justice ^[2] - 12:23, 39:14 Justice ^[5] - 5:14, 16:13, 17:15, 31:2, 119:7 justifies ^[2] - 11:3, 102:24 justify ^[3] - 28:4, 30:23, 55:14</p>
J				
<p>January ^[3] - 73:12, 95:10, 109:13 Jeff ^[1] - 4:1 JEFFERY ^[1] - 1:14 job ^[1] - 83:18 joined ^[1] - 5:21 JOSEPH ^[1] - 3:3 Joseph ^[1] - 5:14 Journal ^[1] - 65:11 JR ^[1] - 2:5 judge ^[1] - 55:24 Judge ^[4] - 1:11, 3:23, 99:20, 99:21 judge's ^[1] - 119:15 judgment ^[59] - 10:19, 11:16, 12:10, 15:24, 16:17, 18:25, 19:23, 21:7, 22:20, 24:15, 28:13, 28:20, 31:7, 32:9, 34:2, 34:3, 34:22, 34:24, 35:6, 38:4, 43:13, 49:10, 49:24, 52:9, 53:25, 54:2, 56:17, 56:18, 56:22, 59:1, 59:3, 59:5, 60:15, 64:1, 64:18, 64:22, 66:12, 66:15, 66:18, 66:22, 68:13, 69:24, 70:9, 70:10, 70:11, 70:20, 76:2, 76:14, 77:6, 77:10, 77:16, 81:9,</p>				
K				
<p>Kagan ^[1] - 119:7 KATZ ^[1] - 2:21 Katz ^[2] - 5:22, 100:12 keep ^[6] - 8:1, 20:16, 30:18, 51:1, 69:22, 77:18 keeping ^[1] - 119:7 KENNETH ^[1] - 2:9 Kenneth ^[2] - 4:24, 5:3 key ^[3] - 26:9, 30:16, 41:16 Kim ^[2] - 5:22, 99:7 KIM ^[1] - 2:18 kind ^[10] - 27:25, 31:15, 95:14, 95:24, 102:22, 103:10,</p>				

<p>106:16, 108:15, 110:4</p> <p>kindly [1] - 113:6</p> <p>Kisor [5] - 115:4, 115:18, 115:21, 119:6, 120:1</p> <p>KISOR [1] - 115:4</p> <p>knowledge [1] - 109:24</p> <p>known [3] - 46:1, 48:21, 76:23</p> <p>knows [4] - 31:3, 71:13, 72:15, 79:3</p> <p>KOBRE [1] - 2:18</p> <p>Kobre [2] - 5:22, 99:7</p>	<p>leads [1] - 114:21</p> <p>least [7] - 6:22, 13:24, 29:4, 78:3, 87:1, 95:13, 108:25</p> <p>leave [2] - 80:20, 86:25</p> <p>leaving [2] - 80:11, 113:2</p> <p>led [1] - 11:11</p> <p>left [1] - 89:25</p> <p>legal [30] - 10:7, 10:12, 10:19, 10:24, 12:10, 13:12, 13:15, 14:11, 20:21, 24:20, 25:22, 28:5, 28:6, 28:7, 28:20, 32:8, 32:10, 33:21, 33:22, 33:24, 47:24, 49:20, 50:5, 51:2, 53:8, 54:5, 56:8, 114:6, 115:20, 116:23</p> <p>legislature [2] - 35:24, 69:12</p> <p>legitimacy [2] - 25:14, 35:22</p> <p>legitimate [5] - 26:12, 41:19, 42:18, 59:12, 67:9</p> <p>lending [1] - 11:20</p> <p>length [2] - 29:8, 52:3</p> <p>LEONARD [1] - 1:11</p> <p>less [6] - 15:13, 66:18, 67:16, 68:14, 104:3, 110:17</p> <p>lesser [1] - 102:24</p> <p>letter [19] - 16:12, 42:14, 42:16, 43:13, 44:23, 45:4, 45:6, 45:11, 45:13, 45:19, 46:15, 47:16, 48:8, 52:20, 58:10, 60:4, 103:25, 105:10, 119:25</p> <p>letters [1] - 12:1</p> <p>level [4] - 31:6, 75:21, 81:21, 81:22</p> <p>liability [4] - 21:13, 22:6, 22:20, 59:3</p> <p>liable [3] - 38:4, 56:12, 56:18</p> <p>liberally [1] - 25:13</p> <p>license [48] - 30:23, 47:14, 47:20, 59:20, 59:24, 60:11, 60:12, 60:19, 74:5, 77:19, 77:21, 78:18, 79:4, 86:5, 86:6, 86:7, 88:8, 88:18, 89:1, 89:8, 89:13, 89:14, 89:18, 92:10, 92:12, 93:4, 98:15, 102:3,</p>	<p>103:1, 103:15, 103:22, 103:24, 104:7, 104:9, 104:10, 104:17, 104:22, 106:21, 108:4, 109:17, 114:11, 114:12, 114:18, 115:7, 116:20, 117:25, 118:21, 119:1</p> <p>licenses [4] - 13:6, 109:19, 109:25, 110:3</p> <p>licensing [2] - 88:20, 115:15</p> <p>lien [5] - 71:17, 71:20, 85:6, 113:9, 114:12</p> <p>light [5] - 13:17, 46:23, 66:25, 94:7, 120:6</p> <p>lights [2] - 60:17, 60:18</p> <p>likelihood [1] - 18:3</p> <p>likely [3] - 45:5, 94:23, 110:4</p> <p>limit [6] - 71:20, 94:18, 95:7, 95:8, 95:24, 96:8</p> <p>limitation [1] - 105:3</p> <p>Limited [1] - 2:24</p> <p>limited [8] - 7:23, 22:18, 23:6, 87:9, 87:10, 87:11, 115:8, 118:11</p> <p>limiting [2] - 22:18, 117:6</p> <p>line [9] - 5:4, 5:21, 16:12, 17:13, 17:14, 31:2, 42:6, 42:21, 106:14</p> <p>LIPTON [1] - 2:21</p> <p>Lipton [2] - 5:22, 100:12</p> <p>list [1] - 19:14</p> <p>listing [1] - 19:11</p> <p>litigant [1] - 11:15</p> <p>litigate [4] - 79:10, 116:4, 116:13, 118:17</p> <p>litigated [8] - 24:16, 38:7, 38:11, 40:16, 49:25, 72:9, 74:7, 116:22</p> <p>litigating [3] - 40:2, 119:19, 119:24</p> <p>litigation [12] - 11:11, 38:10, 40:6, 40:18, 40:20, 48:5, 50:1, 51:2, 53:11, 55:1, 75:2, 82:14</p> <p>live [1] - 22:12</p>	<p>living [1] - 8:22</p> <p>LLP [7] - 1:16, 1:19, 2:5, 2:9, 2:11, 2:15, 2:18</p> <p>location [2] - 23:12, 35:14</p> <p>logical [2] - 49:1, 49:7</p> <p>logically [1] - 22:21</p> <p>look [6] - 17:17, 18:20, 50:24, 52:19, 86:22, 113:6</p> <p>looked [1] - 14:6</p> <p>looking [2] - 121:7, 121:16</p> <p>looks [2] - 58:10, 97:5</p> <p>lose [2] - 49:21</p> <p>losing [2] - 15:12, 51:3</p> <p>loss [1] - 119:22</p> <p>lost [2] - 54:12, 97:16</p> <p>love [1] - 55:9</p> <p>Lynn [1] - 50:11</p>	<p>108:15, 112:13</p> <p>matter [15] - 5:23, 5:25, 11:15, 18:6, 27:12, 28:14, 29:15, 30:7, 35:8, 54:10, 65:15, 78:1, 84:6, 97:5, 108:25</p> <p>matters [1] - 7:25</p> <p>maximize [7] - 73:21, 74:25, 83:19, 91:7, 94:17, 96:11, 106:25</p> <p>maximizing [1] - 107:6</p> <p>mean [24] - 16:3, 17:6, 18:5, 23:21, 30:8, 33:5, 44:8, 47:8, 50:10, 51:5, 51:15, 74:4, 76:3, 76:13, 77:11, 77:24, 83:16, 94:19, 103:16, 104:6, 116:10, 116:12, 117:17, 118:16</p> <p>meaning [4] - 10:3, 10:13, 11:22, 62:5</p> <p>means [6] - 29:19, 51:12, 96:18, 114:16, 117:12, 117:16</p> <p>meant [2] - 17:20, 110:20</p> <p>mechanisms [1] - 15:17</p> <p>meet [1] - 120:3</p> <p>mention [1] - 42:24</p> <p>mentioned [1] - 46:15</p> <p>mentions [4] - 44:25, 45:12, 45:14</p> <p>merit [2] - 41:9, 42:20</p> <p>met [1] - 112:16</p> <p>middle [1] - 65:24</p> <p>might [29] - 10:1, 16:18, 19:12, 25:10, 33:23, 37:3, 41:2, 43:5, 45:24, 53:10, 62:17, 65:20, 69:10, 80:2, 81:19, 83:3, 86:10, 86:11, 87:19, 87:20, 88:10, 90:11, 91:12, 91:16, 93:16, 94:22, 101:19, 105:10, 115:17</p> <p>MIGUEL [1] - 1:20</p> <p>Miguel [4] - 4:4, 8:23, 48:18, 113:24</p> <p>military [1] - 58:16</p> <p>Miller [1] - 68:25</p> <p>million [3] - 58:12, 67:5, 67:15</p> <p>mind [2] - 45:21, 91:10</p>
<p>L</p>			<p>M</p>	
<p>language [8] - 29:18, 31:21, 43:23, 44:4, 52:7, 60:13, 120:6</p> <p>large [1] - 69:19</p> <p>largely [1] - 118:7</p> <p>larger [1] - 12:21</p> <p>last [24] - 5:23, 6:14, 8:25, 9:4, 9:9, 9:20, 10:15, 14:4, 28:25, 29:9, 44:3, 48:3, 55:22, 61:13, 63:8, 63:20, 70:6, 73:8, 79:12, 113:12, 115:4, 117:6, 119:3, 120:14</p> <p>late [1] - 71:24</p> <p>latitude [1] - 90:13</p> <p>latter [3] - 11:25, 21:15, 102:15</p> <p>law [27] - 11:3, 27:24, 28:21, 29:15, 35:8, 37:18, 37:21, 38:16, 38:20, 39:5, 39:6, 39:11, 39:18, 52:4, 54:11, 64:11, 72:14, 72:22, 75:25, 84:6, 91:13, 91:21, 92:2, 106:20, 109:1, 115:1, 119:12</p> <p>lawful [4] - 49:10, 51:9, 51:21, 53:20</p> <p>lawfully [1] - 11:16</p> <p>laws [4] - 26:22, 51:19, 57:17, 57:18</p> <p>lawsuit [2] - 21:21, 21:25</p> <p>lawyers [1] - 9:17</p> <p>Layton [1] - 4:2</p> <p>LAYTON [1] - 1:13</p> <p>lead [4] - 33:24, 46:21, 94:24, 102:22</p> <p>leader [2] - 15:9, 18:9</p> <p>leadership [1] - 31:23</p>			<p>Maduro [4] - 48:1, 51:12, 55:2, 58:13</p> <p>Magistrate [3] - 39:12, 39:13, 39:17</p> <p>main [1] - 12:19</p> <p>major [2] - 65:16, 65:19</p> <p>manage [1] - 59:8</p> <p>management [1] - 96:2</p> <p>manner [7] - 28:10, 57:15, 58:2, 59:10, 102:11, 103:18, 109:11</p> <p>manufactured [1] - 24:19</p> <p>manuscript [1] - 16:5</p> <p>Marcus [2] - 5:21, 99:6</p> <p>MARCUS [1] - 2:18</p> <p>market's [1] - 66:9</p> <p>Marshal [1] - 109:4</p> <p>marshal [4] - 66:20, 85:3, 97:4, 97:7</p> <p>Marshal's [2] - 95:16, 97:8</p> <p>marshals [8] - 54:17, 66:14, 68:2, 68:4, 69:16, 71:23, 80:6, 91:13</p> <p>marshals' [1] - 73:13</p> <p>Mary [1] - 23:22</p> <p>Master [12] - 80:5, 80:14, 80:23, 81:18, 81:24, 82:21, 97:18, 97:21, 97:25, 98:3,</p>	

<p>mine [2] - 31:4, 39:16</p> <p>minimize [1] - 91:6</p> <p>minimum [2] - 95:3, 112:16</p> <p>minority [2] - 96:14, 96:16</p> <p>minute [2] - 33:5, 33:7</p> <p>minutes [4] - 107:9, 107:13, 108:7, 111:25</p> <p>Miscellaneous [1] - 6:18</p> <p>MISCELLANEOUS [1] - 1:4</p> <p>missive [1] - 18:15</p> <p>mistaken [1] - 23:25</p> <p>misunderstand [1] - 44:19</p> <p>mockery [1] - 85:15</p> <p>moment [1] - 98:12</p> <p>money [4] - 15:21, 77:5, 77:13</p> <p>month [2] - 17:2, 83:12</p> <p>months [8] - 67:12, 67:18, 67:24, 73:10, 79:5, 93:20, 95:22, 104:3</p> <p>moot [2] - 47:23</p> <p>MORITZ [3] - 2:15, 2:16, 5:19</p> <p>Moritz [1] - 5:20</p> <p>morning [39] - 3:22, 4:1, 4:3, 4:6, 4:7, 4:12, 4:17, 4:19, 4:20, 4:23, 4:25, 5:7, 5:10, 5:11, 5:13, 5:16, 5:19, 6:5, 6:19, 8:15, 8:17, 25:3, 25:5, 25:8, 25:13, 36:17, 36:18, 43:6, 61:18, 63:14, 63:15, 93:25, 94:14, 95:24, 98:11, 99:9, 102:17, 105:21</p> <p>morning's [1] - 45:6</p> <p>MORRIS [1] - 2:9</p> <p>Morris [1] - 5:3</p> <p>most [7] - 17:1, 58:14, 68:16, 81:8, 94:23, 95:18, 120:13</p> <p>motion [39] - 6:23, 9:9, 9:21, 10:8, 19:20, 20:2, 20:3, 20:12, 20:13, 21:5, 22:25, 23:3, 28:6, 34:22, 36:21, 36:22, 37:2, 37:17, 40:3, 40:23, 41:7, 41:14, 49:13, 50:20, 52:1, 53:15, 55:5, 55:16,</p>	<p>55:18, 61:6, 62:10, 63:6, 74:4, 84:22, 98:10, 103:3, 106:1, 106:11</p> <p>motions [10] - 6:22, 8:12, 18:19, 47:22, 75:18, 94:14, 98:13, 98:18, 103:6, 116:23</p> <p>motions' [1] - 6:25</p> <p>mouth [2] - 15:21, 17:17</p> <p>move [22] - 7:8, 48:15, 63:8, 67:19, 72:6, 73:25, 78:16, 84:3, 84:14, 88:13, 88:24, 91:8, 100:25, 101:1, 101:15, 103:8, 103:13, 104:7, 104:9, 104:15, 118:25, 121:14</p> <p>moves [1] - 83:25</p> <p>moving [13] - 4:22, 7:3, 11:8, 40:22, 46:17, 73:18, 84:7, 87:8, 102:9, 102:11, 103:18, 103:20, 105:6</p> <p>MOYER [2] - 1:14, 4:1</p> <p>Moyer [1] - 4:2</p> <p>MR [84] - 4:1, 4:6, 4:12, 4:19, 4:23, 4:25, 5:2, 5:9, 5:13, 5:19, 8:15, 8:19, 14:19, 17:10, 19:2, 19:4, 19:9, 19:16, 19:18, 21:19, 23:21, 25:3, 33:12, 34:20, 35:18, 36:18, 37:1, 40:10, 40:24, 41:3, 41:6, 44:22, 46:2, 47:7, 48:17, 56:6, 59:25, 60:24, 61:2, 63:5, 63:12, 63:15, 75:15, 77:20, 78:6, 78:21, 79:3, 79:14, 80:9, 81:6, 82:6, 83:4, 84:9, 85:20, 85:25, 93:24, 94:25, 97:2, 97:12, 97:15, 97:20, 98:17, 99:6, 99:13, 99:16, 99:20, 99:25, 100:6, 101:7, 101:14, 101:24, 105:1, 105:16, 105:19, 108:10, 109:18, 110:13, 112:2, 113:23, 117:3, 118:4, 118:7, 119:5, 121:19</p> <p>MS [5] - 100:11, 100:19, 100:21, 110:14, 110:16</p>	<p>multiple [1] - 24:17</p> <p>MUNGER [1] - 2:5</p> <p>Munger [1] - 4:14</p> <p>mute [3] - 7:17, 8:1, 9:24</p> <p>muted [1] - 60:24</p>	<p>negotiations [4] - 96:15, 96:17, 97:24, 112:20</p> <p>neon [2] - 60:17, 60:18</p> <p>Netherlands [1] - 22:11</p> <p>never [13] - 11:7, 38:3, 38:7, 38:8, 39:2, 39:3, 39:8, 40:16, 51:7, 55:8, 86:10, 86:20, 115:9</p> <p>new [8] - 1:17, 12:11, 36:17, 37:1, 49:22, 57:17, 71:7, 93:24</p> <p>New [7] - 1:17, 2:19, 2:22, 48:4, 67:2</p> <p>newly [2] - 12:12</p> <p>news [1] - 43:10</p> <p>newspaper [2] - 17:7, 63:20</p> <p>next [4] - 62:2, 62:3, 70:15, 108:7</p> <p>Nichols [1] - 5:3</p> <p>NICHOLS [1] - 2:9</p> <p>Nicolás [1] - 51:12</p> <p>night [1] - 48:3</p> <p>NO [1] - 1:6</p> <p>nobody [1] - 66:17</p> <p>noise [1] - 7:18</p> <p>non [3] - 62:10, 62:15, 62:25</p> <p>non-jurisdictional [3] - 62:10, 62:15, 62:25</p> <p>none [2] - 18:7, 53:25</p> <p>nonrefundable [1] - 67:14</p> <p>normally [1] - 105:17</p> <p>NOTE [1] - 3:20</p> <p>note [7] - 5:17, 6:8, 6:15, 9:23, 62:17, 91:12, 113:5</p> <p>noted [4] - 5:23, 43:22, 47:23, 69:14</p> <p>notes [1] - 122:7</p> <p>nothing [16] - 11:10, 17:20, 22:12, 22:21, 36:25, 37:1, 42:1, 59:25, 63:5, 68:8, 70:13, 71:5, 86:23, 89:2, 92:23</p> <p>notice [4] - 65:2, 65:18, 75:18, 75:21</p> <p>noticed [1] - 43:23</p> <p>notices [1] - 82:22</p> <p>noting [1] - 62:8</p> <p>notion [2] - 43:7, 69:16</p> <p>November [1] - 73:8</p> <p>number [8] - 9:3, 12:15, 12:16, 18:23,</p>	<p>46:6, 65:3, 79:7, 94:18</p> <p>numbers [1] - 77:1</p> <p>numerous [2] - 26:18, 59:8</p> <p>nutshell [1] - 104:18</p>
		N		O
		<p>NACHBAR [3] - 2:9, 4:23, 5:2</p> <p>Nachbar [1] - 5:3</p> <p>naked [1] - 16:18</p> <p>name [1] - 85:1</p> <p>Nate [3] - 5:4, 36:18, 85:20</p> <p>NATHAN [1] - 2:12</p> <p>national [41] - 13:25, 14:3, 14:9, 14:20, 15:2, 15:5, 15:10, 15:13, 15:14, 15:15, 15:17, 16:9, 16:13, 16:19, 16:24, 18:2, 30:15, 30:24, 31:10, 31:25, 32:19, 42:13, 42:19, 44:10, 44:25, 45:21, 45:22, 45:23, 46:14, 46:18, 52:13, 52:16, 53:14, 58:5, 58:18, 58:20, 87:12, 88:6, 88:19, 92:18, 102:6</p> <p>nations [1] - 58:14</p> <p>naturally [1] - 119:14</p> <p>nature [3] - 28:11, 29:22, 32:3</p> <p>naught [1] - 75:3</p> <p>near [1] - 31:22</p> <p>necessarily [3] - 23:15, 77:13, 82:4</p> <p>necessary [6] - 14:25, 66:12, 102:3, 103:15, 104:7, 104:17</p> <p>necessity [1] - 69:3</p> <p>need [14] - 30:22, 35:7, 36:8, 47:5, 71:14, 77:19, 77:20, 82:1, 89:18, 96:25, 108:2, 118:16, 120:9, 121:8</p> <p>needed [3] - 21:3, 21:21</p> <p>needing [1] - 47:13</p> <p>needlessly [2] - 44:12, 104:11</p> <p>needs [9] - 31:11, 32:10, 32:22, 86:22, 87:1, 110:19, 110:23, 114:11</p> <p>negated [1] - 74:14</p>		<p>object [1] - 94:6</p> <p>objection [2] - 82:23, 97:18</p> <p>obligation [4] - 14:16, 14:20, 14:21, 91:1</p> <p>obligations [2] - 59:9, 80:20</p> <p>obtained [1] - 103:14</p> <p>obvious [1] - 53:16</p> <p>obviously [5] - 46:4, 60:15, 65:11, 79:16, 106:9</p> <p>occur [6] - 30:7, 86:7, 86:10, 86:12, 89:20, 92:25</p> <p>occurred [4] - 8:25, 20:13, 56:22, 104:10</p> <p>occurs [1] - 31:5</p> <p>odds [1] - 76:24</p> <p>OF [3] - 1:2, 1:6, 3:3</p> <p>OFAC [50] - 46:24, 47:4, 47:8, 47:13, 47:17, 59:19, 59:24, 74:1, 74:3, 77:19, 77:20, 77:24, 78:18, 79:9, 79:12, 79:15, 86:13, 86:16, 88:11, 89:15, 89:18, 89:22, 92:4, 98:15, 98:17, 102:3, 103:1, 103:15, 103:20, 103:21, 104:7, 104:9, 104:17, 105:1, 105:8, 105:9, 105:11, 106:15, 108:4, 109:17, 109:20, 109:25, 110:2, 113:6, 113:10, 117:24, 118:9, 118:20, 119:1</p> <p>OFAC's [3] - 60:11, 89:21, 114:3</p> <p>offer [1] - 68:3</p> <p>offered [2] - 36:8, 103:13</p> <p>offering [3] - 65:25, 66:1, 66:14</p> <p>office [2] - 24:1, 24:7</p> <p>Office [3] - 95:16, 95:17, 97:8</p> <p>officer [3] - 91:19, 98:5, 108:15</p>

<p>official [4] - 26:14, 33:20, 53:4, 111:2</p> <p>Official [2] - 1:25, 122:9</p> <p>often [1] - 72:24</p> <p>oil [5] - 16:14, 66:8, 67:19, 68:10, 68:11</p> <p>Oil [1] - 65:11</p> <p>OLSON [1] - 2:5</p> <p>Olson [1] - 4:15</p> <p>once [4] - 20:18, 40:14, 49:2, 91:2</p> <p>one [48] - 7:11, 18:4, 21:6, 21:20, 22:12, 30:20, 33:1, 33:3, 33:13, 40:4, 44:11, 50:14, 50:16, 53:12, 58:10, 59:17, 61:8, 63:19, 66:25, 69:10, 69:20, 71:12, 74:8, 78:25, 81:4, 81:16, 81:23, 84:12, 86:1, 86:3, 95:13, 96:3, 98:14, 101:25, 102:2, 103:16, 107:12, 108:9, 108:21, 109:23, 114:4, 117:3, 118:20, 119:6, 119:8, 120:19, 120:25</p> <p>ones [3] - 21:12, 105:25, 107:25</p> <p>ongoing [2] - 53:11, 116:6</p> <p>onsite [1] - 96:1</p> <p>oOo [1] - 3:18</p> <p>open [1] - 96:9</p> <p>open-ended [1] - 96:9</p> <p>opinion [9] - 29:6, 29:8, 37:14, 37:15, 39:17, 62:1, 62:9, 115:22, 117:6</p> <p>opportunity [2] - 76:13, 88:15</p> <p>oppose [3] - 77:24, 80:11, 80:16</p> <p>opposed [2] - 7:23, 108:1</p> <p>opposite [1] - 29:7</p> <p>option [3] - 67:12, 67:17, 98:14</p> <p>options [2] - 19:12, 79:15</p> <p>oral [2] - 3:20, 122:5</p> <p>Oral [1] - 1:9</p> <p>order [17] - 6:20, 7:12, 24:24, 55:11, 57:5, 57:6, 65:15, 68:12, 72:1, 73:17, 75:10, 76:16, 83:10, 85:3,</p>	<p>96:21, 97:3, 114:13</p> <p>ordered [1] - 99:2</p> <p>ordering [1] - 98:22</p> <p>Orders [1] - 105:8</p> <p>orders [4] - 57:7, 73:18, 93:13, 113:17</p> <p>ordinary [4] - 16:17, 66:20, 69:2, 72:15</p> <p>ostensibly [1] - 9:1</p> <p>otherwise [6] - 22:25, 57:3, 58:16, 93:22, 109:3, 120:3</p> <p>ought [2] - 28:14, 57:12</p> <p>outbid [3] - 70:1, 70:18, 70:22</p> <p>outcome [4] - 12:9, 13:4, 94:24, 98:20</p> <p>outlining [1] - 116:18</p> <p>outright [1] - 102:22</p> <p>outstanding [1] - 9:5</p> <p>overall [2] - 66:9, 101:17</p> <p>overcome [1] - 98:18</p> <p>overcoming [1] - 57:2</p> <p>overlap [1] - 45:3</p> <p>overriding [2] - 27:21, 109:10</p> <p>override [1] - 115:6</p> <p>oversight [1] - 98:3</p> <p>overstate [1] - 46:13</p> <p>oversubscribed [2] - 66:1, 66:4</p> <p>overturned [1] - 78:10</p> <p>owe [1] - 64:22</p> <p>own [15] - 11:8, 13:10, 18:7, 18:13, 18:15, 20:22, 24:12, 24:20, 36:25, 60:15, 66:3, 70:23, 73:5, 113:1, 116:5</p> <p>owner [3] - 38:1, 39:5, 75:19</p> <p>ownership [5] - 37:19, 37:22, 38:6, 38:15, 39:16</p> <p>owning [1] - 68:10</p>	<p>panel [1] - 12:24</p> <p>papers [10] - 18:22, 25:12, 26:19, 29:6, 35:12, 58:24, 107:19, 111:5, 113:13, 116:5</p> <p>paragraph [4] - 29:7, 58:10, 60:3</p> <p>paragraphs [1] - 29:5</p> <p>Parents [1] - 50:18</p> <p>Paria [1] - 2:24</p> <p>part [7] - 6:22, 24:25, 40:18, 40:19, 45:5, 103:22, 109:3</p> <p>participate [1] - 109:22</p> <p>participation [1] - 67:2</p> <p>particular [3] - 22:4, 56:14, 119:20</p> <p>particularly [5] - 9:25, 43:10, 60:2, 102:21, 105:23</p> <p>parties [20] - 4:22, 7:4, 7:13, 8:13, 36:15, 40:22, 50:16, 53:12, 62:18, 62:22, 64:14, 80:2, 85:17, 91:4, 94:16, 95:4, 104:17, 108:13, 108:24, 112:7</p> <p>parties' [3] - 7:10, 46:9, 120:24</p> <p>partner [2] - 9:7, 116:8</p> <p>parts [1] - 108:10</p> <p>party [9] - 17:22, 51:3, 56:1, 70:10, 70:11, 75:13, 87:2, 89:23, 113:8</p> <p>party's [1] - 11:8</p> <p>passage [1] - 74:14</p> <p>passed [1] - 38:20</p> <p>passing [1] - 93:11</p> <p>past [3] - 41:23, 84:1, 116:10</p> <p>pause [4] - 6:10, 60:22, 110:10, 121:22</p> <p>pay [18] - 11:16, 53:25, 54:2, 54:3, 59:1, 59:10, 64:18, 64:21, 64:22, 65:17, 68:18, 77:5, 77:23, 78:5, 98:9, 98:16, 98:22, 107:22</p> <p>paying [3] - 59:5, 64:23, 77:10</p> <p>payment [3] - 49:10, 53:21, 113:9</p> <p>PDV [9] - 2:13, 5:2, 5:6, 38:5, 61:10,</p>	<p>61:19, 62:5, 62:17, 70:2</p> <p>PDVH [8] - 45:15, 47:21, 62:5, 62:14, 70:3, 73:22, 90:21, 121:4</p> <p>PDVH's [1] - 60:7</p> <p>PDVSA [42] - 4:21, 5:1, 7:3, 7:13, 8:13, 10:4, 21:1, 21:6, 22:6, 22:9, 22:20, 23:13, 27:7, 36:15, 38:1, 38:4, 38:9, 39:6, 39:7, 39:14, 40:11, 42:17, 48:4, 54:2, 54:24, 55:1, 55:7, 56:12, 56:18, 61:15, 62:5, 62:9, 62:14, 62:24, 76:12, 85:19, 90:18, 92:2, 94:16, 113:3, 121:4</p> <p>PDVSA's [1] - 45:15</p> <p>pendency [2] - 54:25, 55:14</p> <p>pending [10] - 8:12, 47:22, 53:15, 79:5, 98:11, 98:19, 103:1, 103:3, 110:6, 116:23</p> <p>penultimate [1] - 60:3</p> <p>people [13] - 24:17, 31:17, 52:25, 67:3, 67:8, 68:14, 69:22, 76:6, 82:23, 110:24, 111:17, 116:4, 116:6</p> <p>percent [7] - 36:3, 66:14, 66:16, 66:19, 66:21, 67:15, 69:25</p> <p>perfectly [3] - 14:24, 59:12, 80:24</p> <p>perhaps [9] - 14:17, 18:23, 18:24, 18:25, 23:11, 35:12, 45:3, 62:5, 83:12</p> <p>period [7] - 35:4, 72:2, 72:4, 72:6, 72:23, 80:21, 85:2</p> <p>permission [6] - 4:15, 4:17, 5:5, 5:8, 5:24, 107:1</p> <p>permit [3] - 50:4, 106:16, 106:18</p> <p>permitting [1] - 7:15</p> <p>perpetually [1] - 12:8</p> <p>person [3] - 91:20, 111:3, 111:4</p> <p>personal [1] - 42:10</p> <p>personally [1] - 54:23</p> <p>perspective [4] - 25:9, 83:24, 97:1, 101:25</p> <p>persuasive [2] - 103:13, 118:23</p>	<p>persuasiveness [1] - 43:9</p> <p>pertinent [13] - 18:10, 18:20, 19:12, 19:17, 19:19, 21:12, 23:11, 23:12, 34:12, 34:18, 35:13, 35:14, 84:5</p> <p>Petroleum [2] - 2:14, 2:23</p> <p>Petrozuata [1] - 2:23</p> <p>Phillips [1] - 2:23</p> <p>phone [2] - 37:5, 75:8</p> <p>phrase [2] - 28:24, 52:17</p> <p>physical [1] - 23:17</p> <p>pick [4] - 22:22, 23:8, 70:15, 100:12</p> <p>picked [2] - 22:23, 70:15</p> <p>piercing [1] - 39:7</p> <p>place [7] - 30:11, 67:14, 84:15, 89:12, 90:3, 90:13, 112:24</p> <p>placed [1] - 15:18</p> <p>plain [1] - 109:4</p> <p>Plaintiff [1] - 1:4</p> <p>plaintiff [2] - 43:11, 121:2</p> <p>plaintiffs [2] - 43:11, 69:4</p> <p>plan [1] - 106:24</p> <p>planning [1] - 106:9</p> <p>plausible [1] - 16:11</p> <p>play [3] - 18:12, 83:23, 109:3</p> <p>played [1] - 109:3</p> <p>playing [2] - 51:2, 100:3</p> <p>plays [1] - 67:18</p> <p>pleasure [1] - 4:14</p> <p>plenty [1] - 76:13</p> <p>plicated [1] - 90:15</p> <p>plus [1] - 93:21</p> <p>point [53] - 11:12, 20:14, 23:13, 27:23, 29:24, 30:16, 32:2, 32:17, 34:25, 35:19, 35:25, 36:14, 36:24, 39:15, 39:16, 43:17, 50:13, 60:7, 62:22, 64:2, 64:16, 64:17, 64:18, 68:17, 71:12, 73:24, 74:13, 76:23, 77:7, 83:7, 84:10, 88:25, 89:21, 89:23, 90:11, 91:16, 92:10, 92:14, 93:3, 93:8, 93:23, 94:5, 98:9, 102:16, 107:15, 108:24, 111:10, 113:12, 115:20,</p>
P				
<p>P.A [1] - 1:13</p> <p>p.m [1] - 122:5</p> <p>page [10] - 17:2, 29:8, 33:2, 45:1, 45:13, 59:18, 60:4, 61:16, 62:1</p> <p>paid [7] - 68:17, 70:1, 77:16, 98:23, 108:19, 116:7, 116:24</p>				

<p>115:23, 116:2, 117:3 pointed [5] - 24:10, 29:6, 52:24, 72:9, 116:5 pointing [1] - 17:10 points [12] - 9:3, 25:6, 26:9, 41:17, 42:2, 56:7, 58:4, 61:3, 83:14, 117:21, 118:1, 118:8 policy [39] - 10:10, 11:23, 12:2, 12:21, 12:22, 13:9, 13:11, 13:14, 13:25, 18:3, 18:8, 27:10, 27:21, 28:20, 31:24, 32:9, 33:5, 33:6, 41:15, 43:2, 43:9, 43:12, 44:9, 44:25, 45:16, 46:16, 53:7, 53:9, 60:9, 87:12, 88:6, 88:19, 92:18, 102:6, 102:21, 103:12, 103:17, 104:11, 118:24 political [1] - 47:18 portion [4] - 8:7, 8:8, 70:2, 98:8 posed [1] - 88:10 poses [1] - 59:7 position [29] - 10:10, 11:18, 18:18, 19:13, 27:20, 29:15, 29:21, 43:14, 48:10, 56:10, 75:10, 86:23, 87:4, 87:5, 87:8, 87:20, 87:22, 88:22, 92:13, 104:18, 105:5, 106:22, 107:5, 107:25, 109:10, 119:24, 121:5, 121:6 positions [4] - 25:23, 119:19, 120:24, 121:1 possession [3] - 61:11, 61:20, 69:17 possibilities [1] - 18:23 possibility [6] - 33:10, 33:13, 33:14, 34:7, 35:7, 69:21 possible [5] - 64:23, 66:21, 71:8, 78:4, 108:20 possibly [4] - 30:2, 30:14, 48:24, 71:9 post [6] - 10:7, 10:9, 13:24, 34:16, 69:11, 71:15 post-hearing [2] - 10:9, 13:24 post-sale [1] - 34:16</p>	<p>postdated [1] - 24:14 posthoc [1] - 119:20 posting [2] - 69:10, 112:15 postjudgment [2] - 10:8, 115:24 postponing [1] - 102:25 Potemkin [3] - 15:9, 31:23, 87:17 potential [11] - 9:13, 45:7, 46:14, 46:16, 46:18, 59:3, 71:7, 102:6, 103:8, 109:15 potentially [4] - 47:11, 47:21, 93:20, 115:2 poverty [1] - 70:8 power [3] - 43:4, 72:3, 83:17 powers [1] - 108:16 practical [2] - 54:10, 66:23 practice [1] - 29:10 precedent [1] - 95:20 precisely [2] - 111:18, 117:11 preclude [1] - 75:11 precluded [1] - 86:16 predated [1] - 40:6 prefatory [7] - 47:12, 87:24, 88:5, 88:17, 104:4, 104:13, 106:16 prefer [1] - 79:25 preferable [1] - 68:14 prejudice [2] - 73:22, 105:22 premises [1] - 41:24 prepared [1] - 93:15 preparing [1] - 73:21 prescribed [1] - 27:24 present [2] - 32:10, 106:12 presentation [1] - 15:21 presented [2] - 14:14, 87:15 preserved [1] - 47:4 President [5] - 17:4, 24:18, 51:9, 51:11, 52:25 president [2] - 17:9, 17:11 press [5] - 65:13, 66:3, 66:5, 109:15, 110:16 pressing [1] - 118:23 pressure [1] - 59:7 prestige [1] - 15:11 presumably [1] - 81:22</p>	<p>pretending [1] - 59:2 pretty [3] - 69:20, 73:10, 82:13 prevail [1] - 106:13 prevails [1] - 106:11 prevent [2] - 16:5, 86:13 prevents [2] - 70:14, 71:5 previously [4] - 28:11, 56:11, 58:25, 61:5 price [6] - 64:14, 66:21, 69:14, 76:4, 109:12, 109:16 prices [1] - 67:19 pricing [1] - 66:7 primarily [1] - 46:17 primary [1] - 47:10 principally [2] - 8:11, 94:12 principles [2] - 30:4, 115:1 priorities [1] - 45:17 priority [5] - 81:25, 82:2, 82:13, 85:10, 121:12 private [2] - 75:13, 112:23 problem [6] - 71:18, 98:1, 100:7, 101:3, 101:4, 111:7 problems [2] - 31:15, 100:14 procedure [5] - 64:4, 70:25, 94:21, 95:2, 95:3 procedures [30] - 7:8, 7:20, 7:22, 9:13, 63:9, 63:24, 64:8, 64:11, 69:6, 69:12, 74:17, 75:7, 79:22, 89:12, 89:19, 89:22, 90:2, 90:4, 90:8, 90:9, 90:13, 91:18, 94:22, 95:6, 101:23, 104:23, 104:24, 111:14, 112:18, 117:22 proceed [3] - 76:18, 76:21, 102:2 proceeding [10] - 5:18, 8:6, 8:7, 8:9, 38:2, 62:18, 76:19, 83:1, 116:6, 122:7 proceedings [1] - 62:22 proceeds [1] - 108:21 process [60] - 30:18, 30:21, 31:10, 32:17, 32:21, 44:5, 46:10, 46:21, 47:4, 47:8,</p>	<p>48:9, 48:15, 54:13, 57:6, 59:9, 62:12, 63:16, 63:17, 64:1, 65:7, 67:10, 68:17, 68:19, 74:11, 75:1, 75:24, 75:25, 76:11, 78:23, 79:4, 80:23, 82:24, 85:14, 86:10, 86:20, 88:11, 88:14, 88:20, 89:24, 90:8, 91:6, 91:10, 92:15, 95:11, 95:25, 96:9, 98:4, 99:1, 107:17, 110:19, 110:23, 112:9, 112:13, 113:3, 114:14, 114:21, 116:16, 116:19, 116:24, 119:15 processes [5] - 16:22, 53:6, 71:4, 85:5, 85:7 product [1] - 117:23 professional [1] - 109:3 professionals [1] - 108:20 progress [2] - 31:18, 78:19 prohibit [2] - 73:18, 80:1 prohibited [2] - 8:7, 8:8 prohibits [1] - 117:10 promise [1] - 7:7 proper [1] - 103:6 properly [2] - 23:2, 34:9 properties [1] - 119:13 property [51] - 18:24, 19:25, 20:7, 20:9, 20:15, 20:18, 20:21, 21:8, 21:14, 22:4, 22:5, 22:24, 23:1, 23:3, 28:12, 29:22, 30:2, 30:3, 30:5, 30:6, 37:19, 37:22, 37:24, 39:6, 49:3, 49:6, 49:17, 49:18, 56:14, 56:21, 56:25, 57:12, 57:13, 57:16, 69:4, 75:19, 79:19, 106:20, 113:1, 114:9, 114:14, 114:15, 116:3, 117:11, 117:16, 117:18, 118:13, 118:14, 119:12, 119:16 proposal [1] - 107:18 propose [8] - 66:13, 66:19, 67:23, 68:2,</p>	<p>71:2, 72:12, 74:20, 74:21 proposed [17] - 7:22, 7:24, 42:23, 47:12, 63:22, 65:18, 75:8, 80:8, 86:14, 87:9, 87:11, 89:17, 90:5, 90:9, 94:21, 96:8, 105:11 proposes [4] - 68:20, 88:5, 88:17, 109:13 proposing [6] - 45:7, 63:16, 65:9, 65:10, 65:17, 65:21 proposition [3] - 21:24, 26:19, 52:15 propriety [4] - 37:20, 38:10, 40:16, 90:21 prospect [1] - 80:13 prospective [3] - 10:20, 10:23, 73:4 protect [6] - 68:13, 69:4, 74:6, 74:9, 84:2, 88:21 protected [5] - 47:4, 70:5, 71:16, 72:21, 113:17 protecting [1] - 47:9 protection [1] - 112:17 protects [2] - 88:12, 89:10 prove [1] - 60:11 proved [1] - 23:13 proven [1] - 20:2 provide [6] - 28:22, 44:1, 48:10, 83:16, 83:18, 83:21 provided [3] - 31:14, 117:18, 120:18 provides [2] - 32:6, 57:1 provision [1] - 121:9 PTV [1] - 62:19 public [9] - 15:8, 17:24, 41:11, 63:19, 64:2, 65:22, 69:15, 112:11, 114:25 public's [1] - 74:9 publication [2] - 16:5, 63:21 publications [1] - 65:16 publish [1] - 16:7 published [1] - 114:24 purchaser [1] - 73:5 purchasers [1] - 71:7 purely [1] - 50:5 purport [1] - 21:18 purported [4] - 9:22, 11:8, 49:3, 52:8</p>
---	--	--	--	--

<p>purportedly [1] - 49:5</p> <p>purporting [1] - 20:22</p> <p>purports [1] - 115:16</p> <p>purpose [3] - 18:11, 92:14, 104:13</p> <p>purposes [5] - 22:3, 22:5, 22:9, 22:19, 30:6</p> <p>pursuing [2] - 84:17, 107:4</p> <p>push [1] - 42:4</p> <p>put [17] - 7:17, 15:20, 24:24, 29:4, 69:16, 74:23, 76:10, 83:10, 84:16, 86:9, 90:3, 90:16, 96:19, 97:6, 98:12, 116:1, 116:16</p> <p>puts [2] - 53:5, 70:9</p> <p>putting [3] - 76:9, 89:12, 90:13</p>	<p>raised [18] - 9:1, 10:7, 30:16, 37:6, 37:17, 40:5, 40:6, 40:8, 40:11, 61:17, 65:25, 73:6, 73:8, 81:19, 83:23, 97:2, 110:18, 114:2</p> <p>raises [3] - 45:20, 58:2, 78:3</p> <p>ran [1] - 6:13</p> <p>rapidly [2] - 46:4, 47:18</p> <p>rather [5] - 10:19, 10:23, 41:15, 42:7, 96:15</p> <p>rationality [1] - 75:20</p> <p>re [2] - 68:5</p> <p>re-auction [2] - 68:5</p> <p>reach [3] - 94:13, 94:15, 96:25</p> <p>read [3] - 11:18, 18:22, 68:21</p> <p>reading [3] - 10:8, 58:9, 120:6</p> <p>ready [2] - 101:14, 115:17</p> <p>reaffirm [2] - 17:4, 17:9</p> <p>real [3] - 77:8, 110:23, 112:12</p> <p>realities [2] - 33:10, 33:15</p> <p>realize [2] - 32:1, 52:8</p> <p>really [35] - 18:5, 22:12, 31:11, 32:22, 37:2, 38:20, 38:22, 38:25, 39:25, 44:17, 44:18, 47:5, 48:10, 49:1, 56:15, 61:21, 64:21, 68:21, 69:18, 69:21, 70:9, 70:15, 72:12, 78:12, 80:17, 83:17, 88:25, 89:25, 95:1, 103:2, 104:18, 108:23, 113:1, 118:16, 119:23</p> <p>realm [1] - 102:21</p> <p>reason [19] - 10:18, 11:3, 13:16, 19:22, 24:12, 27:5, 29:17, 35:18, 40:12, 55:20, 70:20, 74:22, 84:1, 90:24, 91:8, 94:5, 103:13, 115:13, 118:23</p> <p>reasonably [3] - 64:2, 64:12, 91:23</p> <p>reasons [2] - 10:14, 84:11</p> <p>rebuttal [1] - 7:6</p> <p>receive [1] - 6:20</p>	<p>receiver [20] - 68:20, 68:23, 69:1, 70:5, 80:4, 80:19, 81:17, 81:20, 81:25, 82:5, 82:16, 92:1, 92:10, 97:4, 107:22, 107:23, 110:21, 111:4</p> <p>receivership [1] - 80:17</p> <p>recent [1] - 17:1</p> <p>recently [3] - 16:6, 58:14, 62:20</p> <p>recognition [3] - 26:11, 43:5, 51:21</p> <p>recognize [6] - 34:2, 64:5, 74:1, 84:4, 94:11, 120:17</p> <p>recognized [4] - 41:18, 51:8, 64:10, 79:23</p> <p>recognizes [1] - 26:17</p> <p>recognizing [2] - 33:18, 64:12</p> <p>recommend [4] - 111:8, 111:19, 119:6, 120:5</p> <p>recommendation [1] - 82:2</p> <p>recommendations [1] - 6:3</p> <p>reconsideration [1] - 35:1</p> <p>record [11] - 6:16, 8:7, 26:3, 27:1, 29:11, 29:13, 30:14, 32:5, 36:2, 55:10, 121:1</p> <p>recourse [1] - 55:13</p> <p>recovered [1] - 94:17</p> <p>reducing [1] - 73:22</p> <p>reestablished [1] - 26:2</p> <p>refer [1] - 55:9</p> <p>reference [4] - 13:24, 35:10, 82:25, 114:22</p> <p>referring [2] - 60:2, 61:5</p> <p>refers [2] - 91:18, 117:5</p> <p>reflect [2] - 42:6, 43:14</p> <p>reflected [1] - 88:1</p> <p>refrain [1] - 47:11</p> <p>refugees [1] - 58:12</p> <p>refundable [1] - 67:6</p> <p>refuse [1] - 83:16</p> <p>refuses [2] - 11:15, 17:4</p> <p>refusing [1] - 17:9</p> <p>refute [2] - 35:19, 36:9</p> <p>regardless [4] - 14:10,</p>	<p>14:15, 47:1, 54:18</p> <p>regime [6] - 11:24, 41:19, 47:20, 59:7, 81:4, 118:15</p> <p>regime's [1] - 58:13</p> <p>regimes [1] - 48:1</p> <p>registered [1] - 18:25</p> <p>registration [1] - 109:21</p> <p>regulation [12] - 114:7, 114:10, 114:17, 114:22, 115:12, 115:14, 116:18, 117:10, 117:15, 117:19, 120:7</p> <p>regulations [7] - 73:17, 86:13, 86:16, 92:4, 105:9, 105:11, 118:18</p> <p>regulatory [4] - 67:13, 67:24, 68:2, 73:5</p> <p>reiterate [1] - 74:16</p> <p>reiterating [1] - 77:18</p> <p>relate [1] - 6:21</p> <p>related [4] - 4:21, 7:3, 7:13, 8:13</p> <p>relatedly [2] - 34:14, 44:10</p> <p>relates [2] - 14:10, 120:21</p> <p>relating [1] - 8:12</p> <p>relations [1] - 30:24</p> <p>relationship [2] - 25:16, 58:13</p> <p>release [3] - 66:3, 66:5, 113:9</p> <p>relevance [2] - 21:22, 24:13</p> <p>relevant [20] - 12:7, 13:15, 14:23, 16:1, 20:5, 20:17, 21:1, 21:23, 23:7, 24:4, 24:7, 24:14, 29:23, 30:1, 51:10, 74:24, 75:22, 75:23, 82:23, 83:11</p> <p>relief [1] - 11:3</p> <p>relitigation [1] - 50:4</p> <p>rely [3] - 21:11, 75:25, 113:18</p> <p>relying [1] - 21:13</p> <p>remain [3] - 9:4, 13:7, 33:4</p> <p>remains [1] - 13:15</p> <p>remand [1] - 29:11</p> <p>remarks [2] - 61:4, 100:13</p> <p>remedy [2] - 69:2, 102:24</p> <p>remind [2] - 8:5, 54:21</p>	<p>remotely [2] - 3:21, 42:1</p> <p>removed [1] - 106:21</p> <p>render [1] - 9:24</p> <p>rendered [2] - 34:23, 56:23</p> <p>renders [1] - 34:22</p> <p>renewal [1] - 67:25</p> <p>reopened [1] - 12:8</p> <p>repeat [2] - 52:5, 66:17</p> <p>repeated [2] - 88:3, 98:7</p> <p>repeatedly [2] - 44:24, 55:3</p> <p>repeating [1] - 97:15</p> <p>report [1] - 121:3</p> <p>reported [1] - 65:13</p> <p>Reporter [2] - 1:25, 122:9</p> <p>reporter's [1] - 6:15</p> <p>REPORTER'S [1] - 3:20</p> <p>represent [1] - 17:23</p> <p>representation [2] - 53:6, 103:18</p> <p>representations [6] - 17:15, 52:16, 55:4, 55:25, 61:15, 72:19</p> <p>Representative [5] - 42:16, 43:13, 44:24, 45:11, 103:11</p> <p>representative [1] - 42:12</p> <p>represented [3] - 55:8, 55:11, 120:20</p> <p>representing [3] - 5:15, 18:13, 62:4</p> <p>represents [1] - 31:7</p> <p>REPUBLIC [1] - 1:6</p> <p>republic [1] - 13:2</p> <p>Republic [28] - 2:7, 4:10, 4:13, 4:16, 6:17, 7:3, 7:12, 10:4, 10:17, 11:12, 11:14, 19:24, 23:10, 25:2, 27:5, 38:6, 48:21, 49:8, 49:9, 49:19, 50:1, 50:4, 58:23, 59:19, 59:21, 93:16, 106:11, 121:3</p> <p>Republic's [2] - 34:13, 59:11</p> <p>request [4] - 47:10, 74:4, 103:24, 109:22</p> <p>requested [3] - 71:21, 109:18, 109:19</p> <p>requesting [1] - 102:24</p> <p>requests [3] - 83:1, 83:13, 110:6</p>
Q				
<p>quash [12] - 6:23, 9:9, 9:21, 37:2, 40:3, 40:23, 55:6, 55:17, 55:18, 61:7, 62:10, 103:4</p> <p>quashed [2] - 61:9, 61:12</p> <p>questioning [1] - 43:22</p> <p>questions [32] - 6:25, 9:4, 10:6, 12:3, 12:6, 13:20, 15:17, 25:9, 25:10, 28:24, 32:23, 36:21, 36:23, 43:18, 43:20, 50:25, 52:12, 53:19, 54:12, 55:24, 75:5, 78:15, 91:25, 93:7, 104:19, 107:10, 107:11, 107:20, 108:6, 114:23, 114:25, 121:16</p> <p>quickly [4] - 8:24, 9:18, 78:16, 114:1</p> <p>quietly [1] - 107:13</p> <p>quite [12] - 25:13, 28:16, 29:21, 32:19, 57:23, 63:24, 64:7, 65:1, 70:15, 81:22, 91:15, 98:7</p> <p>quote [2] - 17:3, 17:5</p> <p>quotes [2] - 33:3, 62:3</p>				
R				
<p>raise [4] - 40:12, 54:9, 54:18, 66:6</p>				

<p>require [3] - 57:18, 69:25, 96:1</p> <p>required [9] - 40:19, 61:8, 61:11, 64:14, 64:17, 67:14, 95:4, 104:23, 117:14</p> <p>requirement [3] - 38:25, 92:3, 115:10</p> <p>requirements [5] - 11:19, 69:9, 75:24, 112:14, 120:3</p> <p>requires [7] - 11:5, 28:14, 39:18, 66:11, 90:15, 91:13, 114:18</p> <p>requiring [2] - 69:9, 95:6</p> <p>res [1] - 50:24</p> <p>resisting [1] - 90:20</p> <p>resolution [6] - 38:14, 38:15, 47:22, 53:13, 77:25, 94:3</p> <p>resolve [2] - 73:3, 97:1</p> <p>resolved [6] - 40:1, 62:16, 82:1, 90:23, 98:19, 101:16</p> <p>resources [3] - 73:2, 75:21, 82:18</p> <p>respect [40] - 9:15, 9:18, 10:2, 10:5, 10:6, 11:25, 12:4, 15:5, 20:25, 24:3, 25:23, 26:20, 27:3, 27:6, 27:17, 28:7, 28:18, 29:22, 29:24, 29:25, 30:9, 30:15, 32:16, 33:12, 34:7, 48:20, 51:4, 52:23, 53:11, 53:14, 53:15, 54:9, 56:8, 58:5, 58:22, 61:22, 78:18, 87:19, 88:11, 114:3</p> <p>respected [2] - 30:12, 36:3</p> <p>respectful [1] - 13:13</p> <p>respectfully [2] - 104:15, 113:19</p> <p>respectively [1] - 37:11</p> <p>respects [2] - 59:9, 109:9</p> <p>respond [6] - 21:10, 41:7, 111:6, 112:1, 112:3, 122:3</p> <p>response [6] - 21:17, 23:20, 42:2, 42:25, 89:15, 91:25</p> <p>responsible [3] - 54:23, 54:24, 59:1</p> <p>rest [1] - 122:2</p> <p>restrain [2] - 20:15, 49:17</p>	<p>restrained [1] - 20:9</p> <p>restrains [1] - 49:2</p> <p>rests [1] - 26:10</p> <p>result [6] - 20:4, 27:22, 39:4, 41:22, 44:5, 56:21</p> <p>results [2] - 11:8, 34:16</p> <p>revenue [1] - 70:6</p> <p>review [1] - 48:8</p> <p>revisited [3] - 28:14, 28:15, 35:7</p> <p>revive [1] - 51:18</p> <p>RICHARDS [1] - 1:13</p> <p>Richards [1] - 4:2</p> <p>rigged [1] - 68:22</p> <p>rightly [1] - 88:7</p> <p>rights [3] - 96:16, 106:20, 119:16</p> <p>ripening [1] - 83:2</p> <p>risk [2] - 58:20, 67:4</p> <p>risks [1] - 46:14</p> <p>roadmap [1] - 9:6</p> <p>Robert [1] - 4:4</p> <p>ROBERT [1] - 1:17</p> <p>role [4] - 97:20, 98:2, 114:3</p> <p>Rosen [2] - 5:22, 100:12</p> <p>ROSEN [1] - 2:21</p> <p>Ross [1] - 5:20</p> <p>ROSS [1] - 2:15</p> <p>rounds [1] - 96:3</p> <p>routinely [1] - 102:19</p> <p>Rule [32] - 6:23, 10:7, 10:13, 26:10, 27:18, 27:22, 34:22, 34:25, 36:21, 36:22, 37:9, 37:17, 37:18, 40:2, 40:17, 41:6, 41:14, 50:3, 50:24, 51:3, 54:13, 54:15, 61:8, 61:18, 61:22, 63:5, 102:7, 106:1, 106:11, 111:12</p> <p>rule [10] - 11:5, 11:19, 11:22, 19:21, 37:9, 51:23, 52:8, 78:24, 84:16, 113:14</p> <p>rule's [1] - 10:22</p> <p>ruled [3] - 40:14, 50:14, 73:16</p> <p>ruler [1] - 51:22</p> <p>rules [7] - 10:16, 11:14, 52:1, 52:4, 71:11, 82:13, 117:13</p> <p>ruling [6] - 29:2, 41:25, 50:12, 50:18, 71:23, 76:18</p> <p>rulings [1] - 35:9</p> <p>run [6] - 6:1, 48:13,</p>	<p>68:15, 108:6, 110:19, 110:21</p> <p>running [3] - 6:3, 68:11, 80:21</p> <p>Russia [1] - 58:13</p>	<p>S</p> <p>S.Ct [1] - 115:5</p> <p>safe [2] - 20:16, 121:25</p> <p>sale [125] - 6:1, 6:3, 7:8, 9:13, 16:14, 30:23, 34:15, 34:16, 34:17, 42:17, 42:24, 45:8, 45:15, 46:19, 54:16, 57:6, 60:7, 63:9, 63:19, 63:22, 64:13, 64:19, 64:24, 65:8, 66:10, 70:18, 70:22, 71:10, 73:12, 73:21, 76:19, 77:7, 77:11, 77:12, 77:13, 77:21, 77:22, 78:5, 79:17, 80:13, 81:2, 81:3, 81:8, 81:12, 84:25, 85:2, 85:4, 86:2, 86:7, 86:10, 86:11, 86:15, 86:20, 89:19, 90:14, 90:16, 91:7, 91:18, 91:19, 91:22, 92:7, 92:14, 92:25, 94:18, 95:10, 95:11, 95:14, 95:19, 95:25, 96:14, 96:24, 97:3, 97:4, 97:7, 97:9, 97:23, 97:24, 98:21, 102:2, 102:4, 102:9, 103:8, 103:9, 104:3, 104:12, 104:16, 106:9, 106:16, 106:17, 106:24, 107:3, 107:4, 108:1, 108:18, 108:23, 109:4, 109:10, 109:23, 110:4, 111:7, 111:11, 111:15, 111:21, 112:11, 112:23, 112:24, 112:25, 113:7, 114:16, 114:19, 115:15, 116:19, 117:18, 118:11, 118:17, 118:19</p> <p>sale/execution [1] - 111:7</p> <p>sales [17] - 7:20, 7:22, 30:18, 30:21, 31:10, 32:17, 32:21, 46:21,</p>	<p>48:15, 57:5, 63:16, 95:12, 95:22, 101:23, 104:23, 104:24, 107:17</p> <p>Sam [1] - 4:25</p> <p>sanctions [7] - 9:15, 10:5, 47:20, 106:20, 114:3, 114:17, 118:15</p> <p>satisfied [2] - 77:6, 96:22</p> <p>satisfy [4] - 66:12, 90:21, 90:24, 91:1</p> <p>scenario [1] - 83:25</p> <p>schedule [2] - 73:14, 96:6</p> <p>School [1] - 50:11</p> <p>school [1] - 50:15</p> <p>scope [3] - 10:3, 36:9, 108:16</p> <p>SDNY [1] - 109:21</p> <p>search [1] - 53:8</p> <p>second [9] - 26:20, 38:22, 38:25, 41:22, 43:1, 45:5, 68:3, 106:14, 119:18</p> <p>second-highest [1] - 68:3</p> <p>secrecy [1] - 15:1</p> <p>secrets [1] - 15:19</p> <p>Section [8] - 37:23, 61:19, 63:18, 69:9, 91:18, 92:3, 92:5, 111:13</p> <p>secured [2] - 72:20, 84:17</p> <p>security [39] - 14:1, 14:3, 14:9, 14:20, 15:2, 15:5, 15:14, 15:15, 15:17, 16:9, 16:13, 16:19, 16:24, 30:15, 30:24, 31:11, 31:25, 32:19, 42:14, 42:19, 44:10, 45:1, 45:21, 45:22, 45:23, 46:14, 46:18, 52:13, 52:16, 53:14, 55:12, 58:6, 58:18, 58:21, 87:12, 88:7, 88:19, 92:18, 102:7</p> <p>see [22] - 15:23, 19:19, 41:1, 46:7, 46:9, 53:23, 54:5, 62:22, 67:18, 68:22, 88:22, 94:5, 98:25, 100:6, 100:25, 101:1, 101:2, 101:3, 101:4, 112:12, 116:24, 118:16</p> <p>seek [2] - 62:9, 67:9</p> <p>seeking [6] - 12:23,</p>	<p>21:7, 22:8, 49:9, 56:13, 56:17</p> <p>seem [6] - 10:8, 18:14, 29:20, 50:18, 69:10, 90:6</p> <p>segmented [1] - 24:17</p> <p>seize [1] - 21:8</p> <p>self [3] - 31:12, 31:20, 115:22</p> <p>self-evident [1] - 31:12</p> <p>self-evidently [1] - 31:20</p> <p>self-explanatory [1] - 115:22</p> <p>sell [20] - 20:22, 54:17, 55:13, 64:15, 64:18, 65:3, 66:11, 76:12, 77:3, 77:17, 80:12, 81:11, 90:19, 91:13, 92:11, 98:8, 98:15, 112:25, 113:8, 117:23</p> <p>seller [1] - 77:14</p> <p>selling [6] - 49:5, 64:4, 64:11, 76:21, 77:8, 90:21</p> <p>sells [1] - 63:19</p> <p>senior [1] - 106:12</p> <p>sense [8] - 14:8, 15:11, 24:6, 35:12, 66:24, 103:21, 111:15, 112:22</p> <p>separable [1] - 24:21</p> <p>separate [4] - 21:21, 21:24, 36:9, 37:16</p> <p>separateness [9] - 25:25, 26:1, 26:21, 27:8, 30:12, 35:22, 36:6, 36:11, 57:18</p> <p>September [3] - 1:9, 17:2, 71:25</p> <p>sequence [1] - 103:24</p> <p>serious [6] - 31:20, 32:4, 42:19, 96:7, 103:2</p> <p>seriously [5] - 14:20, 31:12, 31:13, 32:22, 60:7</p> <p>serve [2] - 55:3, 83:13</p> <p>served [4] - 52:21, 71:24, 104:13</p> <p>service [1] - 31:3</p> <p>set [15] - 18:22, 31:18, 43:13, 63:24, 65:21, 69:6, 69:12, 73:12, 74:17, 79:22, 83:9, 96:6, 107:18, 112:9, 112:16</p> <p>sets [2] - 74:2, 91:17</p> <p>setting [5] - 32:21,</p>
---	--	--	--	--	---

<p>74:21, 82:21, 86:15, 103:9</p> <p>settlement [1] - 113:6</p> <p>several [3] - 84:10, 86:14, 111:17</p> <p>severely [1] - 115:8</p> <p>shares [19] - 42:17, 47:21, 55:13, 60:8, 63:19, 65:3, 66:11, 66:14, 66:16, 66:19, 66:21, 67:1, 69:25, 70:2, 73:19, 76:21, 94:18, 95:25, 118:14</p> <p>shed [1] - 46:23</p> <p>sheriff [5] - 75:18, 85:4, 91:19, 109:5, 110:4</p> <p>Sheriff's [1] - 95:17</p> <p>short [1] - 10:18</p> <p>shortly [3] - 50:17, 65:14, 71:10</p> <p>shot [1] - 110:22</p> <p>show [2] - 22:18, 56:1</p> <p>shows [2] - 104:4, 119:23</p> <p>side [12] - 26:14, 27:15, 27:19, 32:3, 35:20, 72:20, 85:21, 90:1, 94:16, 98:14, 98:20, 103:20</p> <p>sight [2] - 49:22, 71:22</p> <p>signed [1] - 42:8</p> <p>significance [1] - 24:20</p> <p>significant [3] - 33:21, 88:6, 114:5</p> <p>significantly [2] - 54:7, 66:4</p> <p>signs [1] - 42:11</p> <p>silence [1] - 121:24</p> <p>simple [1] - 70:16</p> <p>simply [14] - 11:15, 11:23, 21:23, 27:20, 54:3, 59:4, 64:3, 67:17, 68:16, 69:18, 80:11, 82:21, 83:5, 116:2</p> <p>singing [1] - 18:15</p> <p>single [1] - 50:2</p> <p>sit [1] - 107:13</p> <p>situation [10] - 35:21, 42:13, 46:5, 47:19, 52:24, 53:2, 59:7, 81:13, 93:18, 97:8</p> <p>situations [1] - 81:10</p> <p>six [4] - 67:12, 67:18, 67:24, 110:25</p> <p>Sixth [1] - 111:4</p> <p>size [1] - 97:9</p> <p>skeletal [1] - 65:2</p>	<p>skeptically [1] - 14:21</p> <p>skepticism [2] - 16:20, 18:1</p> <p>skilled [1] - 76:22</p> <p>small [1] - 24:25</p> <p>smoother [1] - 120:15</p> <p>sold [8] - 15:6, 23:1, 70:2, 73:19, 91:7, 94:18, 95:19, 96:16</p> <p>solely [1] - 56:13</p> <p>solution [1] - 6:13</p> <p>solved [2] - 89:12, 89:13</p> <p>someone [1] - 81:10</p> <p>sometimes [2] - 44:10, 44:13</p> <p>somewhat [3] - 20:17, 37:4, 69:10</p> <p>soon [1] - 60:19</p> <p>sorry [7] - 38:1, 39:15, 61:2, 97:15, 99:22, 99:23, 110:16</p> <p>sort [26] - 8:24, 9:3, 9:18, 12:21, 13:8, 14:11, 15:4, 49:12, 51:19, 55:9, 68:7, 68:22, 79:10, 80:5, 81:13, 86:2, 95:20, 102:19, 103:14, 105:20, 105:21, 108:25, 110:24, 114:4, 115:9, 116:17</p> <p>sorts [3] - 14:5, 15:3, 115:9</p> <p>sought [2] - 38:3, 49:16</p> <p>sounds [1] - 100:24</p> <p>source [1] - 56:9</p> <p>Southern [1] - 48:4</p> <p>sovereign [5] - 26:17, 28:3, 49:21, 49:24, 87:19</p> <p>spaces [1] - 23:17</p> <p>spatial [1] - 106:3</p> <p>speakerphone [1] - 101:9</p> <p>speaking [5] - 8:1, 8:4, 40:22, 99:11, 103:11</p> <p>Special [17] - 42:16, 43:13, 44:24, 45:10, 80:4, 80:14, 80:23, 81:18, 81:24, 82:21, 97:17, 97:21, 97:25, 98:3, 103:10, 108:15, 112:13</p> <p>special [3] - 42:12, 109:24</p> <p>specific [10] - 6:2, 6:25, 15:4, 15:7, 16:21, 58:11, 58:20,</p>	<p>102:19, 120:1, 120:6</p> <p>specifics [1] - 45:19</p> <p>specify [1] - 82:20</p> <p>speculate [2] - 43:3, 43:6</p> <p>speculation [2] - 43:11, 79:2</p> <p>speech [1] - 17:12</p> <p>spend [1] - 82:17</p> <p>spent [2] - 12:23, 84:4</p> <p>spite [1] - 94:7</p> <p>spokesperson [1] - 85:21</p> <p>sport [1] - 116:4</p> <p>spring [1] - 65:24</p> <p>STAHL [1] - 2:11</p> <p>Stahl [1] - 5:4</p> <p>stake [2] - 46:6, 108:3</p> <p>standard [3] - 29:10, 64:4, 70:25</p> <p>standing [2] - 92:21, 93:3</p> <p>star [1] - 110:16</p> <p>Stark [3] - 3:23, 99:20, 99:21</p> <p>STARK [1] - 1:11</p> <p>start [4] - 66:14, 72:10, 84:23, 104:24</p> <p>started [1] - 105:20</p> <p>starting [1] - 93:8</p> <p>state [4] - 12:20, 15:19, 37:18, 64:11</p> <p>statement [21] - 9:2, 9:19, 10:2, 11:23, 13:23, 31:2, 31:5, 42:5, 42:15, 46:11, 47:17, 48:3, 60:5, 73:20, 78:25, 87:25, 88:1, 88:3, 92:16, 94:20, 110:1</p> <p>statements [9] - 14:5, 14:13, 31:25, 52:23, 56:2, 58:20, 60:14, 110:2, 115:9</p> <p>STATES [2] - 1:1, 3:3</p> <p>States [78] - 3:5, 5:12, 5:15, 7:4, 7:14, 10:11, 11:24, 14:9, 23:15, 24:3, 24:8, 25:7, 25:17, 26:7, 26:8, 26:11, 26:15, 26:24, 27:2, 27:4, 27:8, 27:9, 27:20, 28:17, 30:20, 30:25, 31:7, 31:8, 31:9, 31:18, 32:6, 32:8, 32:20, 33:6, 33:17, 33:20, 33:22, 33:25, 34:2, 34:4, 34:10, 35:24, 36:4, 36:7, 37:2, 41:13, 42:2,</p>	<p>42:7, 43:2, 43:4, 43:15, 43:19, 45:8, 45:23, 46:3, 47:2, 48:2, 58:6, 59:22, 60:16, 86:25, 87:7, 88:3, 88:12, 88:14, 88:16, 88:21, 88:23, 92:16, 92:19, 102:5, 102:24, 103:7, 103:12, 104:14, 105:5, 121:4</p> <p>States' [5] - 41:16, 86:23, 87:4, 101:25, 103:17</p> <p>status [10] - 20:21, 25:14, 25:23, 27:7, 30:1, 46:24, 56:21, 108:5, 121:2, 121:12</p> <p>statute [10] - 66:11, 79:23, 84:13, 84:22, 93:9, 94:7, 112:6, 112:15, 112:16, 120:21</p> <p>statutory [2] - 28:3, 64:8</p> <p>stay [9] - 72:2, 72:4, 72:16, 89:10, 93:13, 94:9, 113:17, 115:24, 121:25</p> <p>stayed [1] - 115:7</p> <p>staying [1] - 72:1</p> <p>stays [3] - 71:15, 71:21, 94:9</p> <p>steal [1] - 69:22</p> <p>stenographic [1] - 122:7</p> <p>step [13] - 31:9, 32:21, 33:17, 33:22, 33:24, 37:21, 38:16, 38:18, 38:22, 38:25, 86:19, 103:14</p> <p>steps [32] - 25:24, 26:24, 34:9, 42:24, 45:7, 45:8, 45:14, 47:12, 54:17, 57:5, 57:8, 62:2, 62:3, 75:12, 78:12, 79:10, 80:1, 82:4, 87:9, 87:10, 87:11, 87:24, 88:5, 88:17, 89:16, 96:22, 104:4, 104:10, 104:13, 105:11, 106:17, 109:4</p> <p>stick [1] - 101:19</p> <p>still [8] - 20:12, 24:13, 52:1, 60:24, 73:9, 99:12, 113:2, 116:15</p> <p>stipulate [1] - 93:16</p> <p>stock [21] - 37:25, 38:5, 38:6, 38:16, 39:15, 52:17, 61:20,</p>	<p>63:19, 64:4, 64:5, 89:19, 90:14, 90:19, 90:21, 90:25, 91:6, 91:14, 92:11, 96:16, 117:23</p> <p>stop [3] - 59:14, 68:19, 84:7</p> <p>straightforward [2] - 63:17, 69:20</p> <p>Street [1] - 65:11</p> <p>strength [1] - 18:1</p> <p>stretch [1] - 96:5</p> <p>strictly [3] - 8:7, 8:8, 22:21</p> <p>strong [2] - 29:3, 32:6</p> <p>strongly [1] - 29:4</p> <p>structure [1] - 91:9</p> <p>structured [1] - 91:10</p> <p>subbranches [1] - 106:2</p> <p>subchapter [2] - 63:25, 91:17</p> <p>subject [7] - 10:20, 16:17, 32:18, 67:24, 81:11, 115:15, 117:24</p> <p>submission [2] - 9:20, 27:12</p> <p>submissions [1] - 27:5</p> <p>submitted [1] - 25:21</p> <p>subordinate [1] - 81:21</p> <p>subordinated [1] - 82:7</p> <p>subordination [1] - 82:3</p> <p>subpoena [1] - 83:17</p> <p>subsections [1] - 50:3</p> <p>subsequent [1] - 49:8</p> <p>subsidiary [1] - 73:22</p> <p>substantial [1] - 65:22</p> <p>substitute [2] - 27:24, 28:19</p> <p>successful [2] - 55:18, 87:20</p> <p>successfully [1] - 20:19</p> <p>sufficient [1] - 84:21</p> <p>sufficiently [1] - 36:1</p> <p>suggest [8] - 14:1, 28:16, 29:20, 67:13, 83:12, 94:8, 104:4, 113:5</p> <p>suggested [4] - 27:15, 31:22, 94:8, 103:10</p> <p>suggesting [5] - 23:12, 32:8, 78:4, 95:2, 110:21</p> <p>suggestion [7] - 41:9, 42:5, 57:21, 79:7,</p>
---	--	---	---	---

<p>81:17, 98:7, 104:2 suggestions [1] - 102:15 suggests [2] - 102:11, 103:19 suit [1] - 29:2 sum [2] - 32:5, 92:13 summarize [1] - 48:23 summary [1] - 17:7 superior [2] - 76:1 supervise [1] - 112:13 supplement [3] - 75:18, 79:22, 96:10 supplemental [9] - 6:20, 42:6, 65:10, 65:17, 65:18, 70:17, 74:19, 74:20, 83:19 supplemented [2] - 71:1, 94:22 supplies [1] - 66:8 support [10] - 11:20, 11:24, 15:7, 17:4, 25:19, 25:22, 32:6, 76:9, 76:11, 77:23 supported [1] - 87:24 supporting [2] - 12:2, 110:2 supports [2] - 10:4, 10:16 suppose [4] - 16:10, 35:5, 46:20, 120:19 supposed [2] - 43:8, 54:18 supposedly [1] - 49:4 Supreme [29] - 12:16, 26:18, 46:8, 49:25, 50:17, 50:21, 52:10, 63:23, 64:9, 65:7, 69:5, 70:7, 71:1, 72:17, 74:13, 76:17, 76:19, 76:24, 77:2, 79:24, 83:8, 115:3, 115:7, 115:8, 115:22, 117:6, 117:13 surface [2] - 16:11, 16:16 surprised [2] - 95:9, 113:14 surrounding [2] - 58:12, 66:8 survival [1] - 59:11 suspect [1] - 77:20 Sweden [3] - 20:23, 22:11, 49:6 sweep [1] - 21:5 sympathy [1] - 53:24 synonymous [1] - 81:7 system [2] - 74:10, 85:15</p>	<p style="text-align: center;">T</p> <p>talks [2] - 62:2, 118:12 target [4] - 73:12, 74:3, 114:21, 116:19 technical [3] - 7:25, 100:14, 120:14 technological [1] - 6:13 technology [1] - 8:20 telephonic [2] - 3:20, 122:5 Telephonic [1] - 1:9 temporal [4] - 24:6, 24:22, 35:9, 106:3 temporarily [2] - 47:11, 102:25 ten [3] - 63:21, 73:10, 93:19 tend [1] - 16:3 term [2] - 15:2, 15:11 terms [22] - 11:17, 12:21, 14:25, 18:13, 30:1, 33:15, 34:11, 62:3, 63:16, 75:7, 79:21, 80:14, 80:25, 81:7, 84:14, 96:9, 97:17, 112:15, 113:2, 119:12, 119:13 terrific [1] - 66:16 tested [1] - 13:7 THE [92] - 1:1, 1:2, 3:22, 4:7, 4:17, 4:20, 5:7, 5:11, 5:16, 6:5, 6:11, 8:17, 13:22, 17:1, 18:16, 19:3, 19:6, 19:11, 19:17, 21:9, 23:9, 25:1, 32:25, 34:11, 35:11, 36:12, 36:23, 40:4, 40:21, 40:25, 41:5, 43:20, 45:20, 46:20, 48:12, 56:3, 59:17, 60:20, 60:23, 61:1, 63:3, 63:7, 63:14, 75:5, 77:17, 78:2, 78:14, 78:25, 79:7, 79:21, 80:25, 81:16, 82:25, 83:22, 85:16, 85:23, 93:6, 94:11, 96:23, 97:11, 97:13, 97:17, 98:6, 99:3, 99:11, 99:14, 99:17, 99:22, 100:2, 100:9, 100:17, 100:20, 100:22, 101:11, 101:18, 104:21, 105:12, 105:18, 107:7, 109:17, 110:7, 110:11,</p>	<p>110:15, 111:24, 113:22, 117:1, 118:2, 118:5, 119:2, 120:8, 121:20, 121:23 theory [2] - 23:6, 56:12 thereafter [1] - 50:17 therefore [7] - 17:25, 36:4, 40:1, 43:15, 47:5, 94:20, 117:12 they've [3] - 78:8, 78:10, 90:5 thinking [2] - 60:2, 119:25 thinks [1] - 53:2 thinnest [1] - 105:25 third [2] - 58:10, 113:8 Third [15] - 10:21, 11:4, 11:21, 29:6, 29:17, 37:14, 50:9, 74:12, 75:3, 76:17, 76:20, 82:11, 82:12, 111:9, 119:23 THOMPSON [1] - 2:3 thoroughly [1] - 31:6 thoughts [1] - 7:10 thousand [1] - 95:18 three [17] - 71:19, 72:2, 72:23, 73:7, 83:22, 84:1, 84:16, 87:3, 89:5, 89:7, 93:8, 94:7, 95:22, 107:11, 113:14, 120:21, 121:9 three-year [10] - 71:19, 72:2, 72:23, 83:22, 84:16, 93:8, 94:7, 113:14, 120:21, 121:9 throughout [5] - 8:1, 38:2, 43:24, 54:25, 109:20 throw [1] - 107:11 throws [1] - 13:17 Thursday [1] - 1:9 tightly [1] - 30:19 timeline [1] - 48:11 timing [2] - 109:9, 121:10 title [2] - 63:25, 91:16 today [19] - 6:6, 9:8, 11:12, 18:19, 33:3, 34:13, 38:2, 40:7, 51:8, 87:10, 90:6, 90:20, 95:1, 96:6, 104:3, 120:14, 120:22, 121:7, 121:17 together [3] - 6:14, 6:19, 74:23</p>	<p>toll [1] - 84:21 tolled [3] - 93:12, 121:10 TOLLES [1] - 2:5 Tolles [1] - 4:14 tolling [4] - 84:12, 84:19, 116:9, 121:11 tolls [1] - 84:13 Tom [1] - 4:12 tomorrow [1] - 78:4 took [3] - 46:7, 56:10, 79:5 top [1] - 45:13 totally [1] - 42:25 touch [2] - 6:24, 107:21 toward [7] - 42:24, 45:7, 45:14, 102:2, 103:8, 104:15, 118:17 towards [2] - 89:17, 102:9 traces [1] - 56:9 transaction [2] - 108:21, 109:9 transcript [2] - 61:16, 122:7 transfer [2] - 92:5, 114:14 travel [1] - 67:3 Treasury [4] - 60:4, 60:6, 114:24, 115:19 treat [2] - 56:17, 111:10 treated [2] - 57:12, 115:2 treating [1] - 32:4 tree [5] - 7:9, 105:21, 105:23, 105:24, 106:10 tribunal [1] - 11:19 tried [7] - 16:7, 24:23, 27:19, 55:7, 62:19, 90:19, 105:2 true [6] - 9:24, 20:12, 40:8, 41:25, 90:18, 122:7 truly [3] - 11:5, 18:9, 70:19 Trump [1] - 52:25 Trump's [1] - 17:4 truncated [1] - 39:13 trustee [1] - 92:6 truth [1] - 68:9 truthfulness [1] - 20:7 try [14] - 20:7, 25:8, 78:11, 78:15, 80:12, 99:19, 100:7, 101:15, 101:20, 105:14, 107:13, 112:23, 116:11</p>	<p>trying [15] - 16:4, 31:18, 38:9, 50:25, 51:13, 53:21, 58:23, 59:5, 59:6, 59:8, 68:7, 68:22, 84:14, 96:19 Tunnell [1] - 5:4 TUNNELL [1] - 2:9 turn [12] - 8:10, 22:15, 25:2, 36:15, 41:1, 81:2, 85:17, 90:4, 98:8, 99:4, 100:8, 100:15 turned [1] - 55:2 turns [2] - 79:15, 84:1 twice [1] - 63:20 two [25] - 9:17, 15:17, 19:18, 19:20, 22:17, 23:5, 26:9, 37:21, 38:16, 39:8, 41:16, 41:23, 45:2, 52:1, 52:8, 61:3, 61:7, 62:21, 71:25, 73:9, 79:5, 81:7, 81:15, 96:3, 118:7 two-step [2] - 37:21, 38:16 TYLER [1] - 1:14 Tyler [1] - 4:3 type [3] - 15:25, 81:13, 119:24 types [2] - 22:17, 115:9 typically [1] - 80:18</p> <p style="text-align: center;">U</p> <p>U.S. [28] - 5:14, 14:3, 33:9, 41:15, 41:20, 42:13, 42:19, 44:25, 45:16, 46:14, 47:9, 53:17, 53:18, 54:2, 58:18, 58:20, 60:8, 64:9, 88:6, 88:19, 103:12, 104:10, 106:15, 107:4, 109:4, 111:22, 118:24, 122:10 U.S.-based [1] - 45:15 U.S.-Venezuela [1] - 47:20 UCC [1] - 67:1 ultimate [2] - 109:16, 118:19 ultimately [6] - 21:2, 79:9, 81:1, 114:15, 116:13, 116:22 unanimously [1] - 10:22 unavailing [1] - 92:11 uncertainties [1] -</p>
---	--	--	---	--

<p>109:14 uncertainty ^[1] - 78:3 uncomfortable ^[1] - 55:23 uncompelled ^[1] - 77:14 under ^[30] - 6:23, 11:20, 11:21, 14:25, 26:10, 27:18, 27:22, 37:22, 38:4, 38:14, 38:16, 39:6, 40:16, 52:4, 54:15, 57:23, 63:5, 80:13, 81:4, 91:21, 92:1, 92:3, 92:5, 103:23, 115:1, 115:17, 117:13, 118:14, 118:18, 120:16 underbrush ^[1] - 9:21 underlying ^[4] - 38:4, 41:17, 41:25, 114:6 undermine ^[1] - 60:8 undermining ^[1] - 41:11 understood ^[1] - 95:1 undertake ^[1] - 94:23 underway ^[1] - 48:9 undisputable ^[1] - 76:23 undisputed ^[3] - 57:20, 86:3, 86:5 undisputedly ^[1] - 36:2 undo ^[2] - 52:9, 85:14 unequivocally ^[1] - 25:22 unexpected ^[1] - 11:7 unfair ^[1] - 97:7 unfortunately ^[5] - 48:9, 100:22, 100:23, 101:7, 117:9 unhappy ^[1] - 79:8 uninformed ^[2] - 27:8, 27:12 unique ^[2] - 24:12, 32:15 UNITED ^[2] - 1:1, 3:3 United ^[84] - 3:5, 5:12, 5:15, 7:4, 7:14, 10:11, 11:24, 14:9, 23:15, 24:3, 24:8, 25:7, 25:16, 26:7, 26:8, 26:11, 26:15, 26:24, 27:2, 27:4, 27:8, 27:9, 27:20, 28:17, 30:20, 30:24, 31:7, 31:8, 31:9, 31:18, 32:6, 32:8, 32:20, 33:6, 33:17, 33:20, 33:22, 33:25, 34:1, 34:4, 34:10,</p>	<p>35:24, 36:4, 36:7, 37:2, 41:13, 41:16, 42:2, 42:7, 43:2, 43:4, 43:15, 43:18, 45:8, 45:22, 45:23, 46:3, 47:2, 48:2, 50:18, 58:6, 59:22, 60:15, 86:23, 86:25, 87:4, 87:7, 88:3, 88:12, 88:14, 88:16, 88:21, 88:23, 92:16, 92:19, 101:25, 102:5, 102:24, 103:7, 103:11, 103:17, 104:14, 105:5, 121:4 universe ^[1] - 109:15 unless ^[4] - 43:18, 77:9, 104:16, 118:25 unlikely ^[2] - 59:20, 59:24 unnecessary ^[1] - 73:23 unprecedented ^[1] - 66:7 unprepared ^[1] - 68:4 unsecured ^[1] - 81:21 unsuccessful ^[1] - 85:8 up ^[31] - 9:14, 13:24, 15:12, 16:3, 18:8, 32:2, 32:5, 32:21, 38:23, 39:14, 50:20, 52:14, 56:1, 58:9, 59:23, 64:18, 65:21, 66:2, 66:17, 67:1, 68:18, 72:10, 72:24, 73:3, 73:15, 74:12, 77:7, 82:11, 82:21, 83:9, 100:13 up-to-date ^[1] - 66:2 upmost ^[1] - 69:2 upset ^[1] - 65:8 urgency ^[1] - 93:21 useful ^[1] - 10:25 usual ^[1] - 16:22</p>	<p>Venezuela ^[77] - 2:7, 2:23, 4:10, 4:13, 6:17, 7:3, 8:12, 19:24, 20:1, 21:2, 21:6, 21:8, 21:10, 22:11, 22:24, 23:14, 24:18, 26:13, 26:23, 27:6, 29:11, 30:6, 31:17, 31:23, 33:4, 33:9, 35:21, 36:2, 36:5, 41:19, 42:13, 46:5, 47:19, 47:25, 51:9, 51:11, 51:14, 51:25, 52:4, 52:24, 53:3, 53:19, 56:13, 56:19, 56:25, 57:13, 58:23, 59:1, 59:3, 59:4, 60:9, 62:6, 64:17, 68:18, 69:23, 71:4, 71:21, 74:23, 76:9, 76:17, 80:12, 83:6, 85:17, 85:19, 87:5, 87:15, 87:18, 87:22, 88:23, 90:18, 90:19, 91:1, 92:20, 92:22, 114:9 Venezuela's ^[4] - 11:20, 41:17, 116:9, 119:22 verify ^[2] - 26:9, 41:16 Verrilli ^[8] - 4:14, 25:4, 41:15, 48:21, 49:11, 56:5, 76:22, 88:2 VERRILLI ^[8] - 2:5, 4:19, 25:3, 33:12, 34:20, 35:18, 56:6, 59:25 version ^[1] - 23:24 versus ^[2] - 6:17, 108:22 vetted ^[1] - 31:6 vetting ^[1] - 44:5 view ^[19] - 10:11, 10:22, 18:7, 34:13, 35:18, 44:19, 59:23, 64:2, 77:18, 79:12, 81:18, 89:22, 98:4, 102:10, 104:22, 108:2, 114:20, 115:18, 121:9 viewed ^[2] - 16:19, 93:22 views ^[14] - 13:12, 33:5, 33:6, 42:6, 42:7, 42:10, 43:2, 44:1, 45:25, 102:6, 106:9, 106:25, 107:16 vigorous ^[1] - 32:1 vigorously ^[1] - 74:7 violate ^[1] - 92:4 violation ^[1] - 105:10</p>	<p>Virgin ^[1] - 50:6 virtue ^[1] - 109:1 voluntarily ^[1] - 80:12 voluntary ^[2] - 11:9, 11:10 vs ^[4] - 50:6, 50:11, 115:4, 115:18</p>	<p>welcome ^[3] - 76:3, 76:5, 76:7 well-established ^[1] - 27:10 Western ^[1] - 58:15 whatnot ^[2] - 13:7, 16:8 whatsoever ^[1] - 42:20 wheeling ^[2] - 27:25, 32:9 whichever ^[1] - 67:16 whim ^[1] - 42:22 whistle ^[1] - 24:9 white ^[1] - 24:1 whole ^[6] - 27:23, 68:19, 82:14, 82:15, 116:4, 116:7 wholly ^[2] - 90:5, 90:9 Wilkie ^[1] - 115:18 willing ^[5] - 66:18, 77:13, 90:7, 93:16, 105:14 Willkie ^[1] - 115:4 Wilmington ^[1] - 1:8 win ^[3] - 50:2, 67:17, 116:13 winning ^[5] - 67:7, 67:11, 67:21, 68:1, 68:12 wins ^[1] - 51:3 wisdom ^[1] - 60:18 wish ^[3] - 7:5, 7:15, 51:6 withdraw ^[1] - 43:5 wolf ^[2] - 100:20, 108:9 Wolf ^[11] - 5:22, 6:1, 100:7, 100:11, 100:17, 100:20, 107:2, 107:21, 110:8, 110:9, 110:15 WOLF ^[6] - 2:21, 100:11, 100:19, 100:21, 110:14, 110:16 won ^[3] - 72:17, 76:13 word ^[2] - 79:12, 119:3 words ^[2] - 67:17, 85:3 works ^[1] - 113:4 worry ^[1] - 121:8 worrying ^[2] - 42:13, 58:17 worse ^[1] - 86:23 worst ^[1] - 83:24 worth ^[1] - 69:23 wound ^[2] - 38:23, 39:14 Wright ^[1] - 68:25</p>
	<p>V</p>		<p>W</p>	
	<p>valid ^[1] - 94:2 valuations ^[1] - 96:13 value ^[12] - 64:12, 65:23, 68:13, 70:20, 71:20, 73:21, 74:25, 83:20, 94:17, 96:11, 106:25, 107:6 various ^[3] - 67:1, 68:23, 93:12 vehicle ^[1] - 80:18 veil ^[1] - 39:7 VENEZUELA ^[1] - 1:6</p>		<p>Wachtel ^[2] - 5:22, 100:12 WACHTEL ^[1] - 2:21 wait ^[3] - 45:25, 67:18, 78:22 waiting ^[2] - 89:1 walk ^[1] - 67:20 Wall ^[1] - 65:11 wants ^[18] - 5:17, 6:8, 26:14, 30:18, 71:5, 71:6, 74:19, 86:9, 86:19, 88:13, 95:10, 105:7, 106:8, 106:24, 107:12, 111:2, 111:14, 112:20 warning ^[2] - 14:12, 14:17 warrant ^[1] - 13:13 warrants ^[1] - 15:25 Washington ^[3] - 1:20, 2:6, 3:4 Watch ^[1] - 14:8 watches ^[1] - 16:4 watching ^[1] - 46:3 ways ^[2] - 45:3, 119:8 weakening ^[1] - 43:4 wearing ^[1] - 24:1 website ^[1] - 114:24 week ^[3] - 73:12, 121:7, 121:17 WEIGEL ^[16] - 1:17, 63:12, 63:15, 75:15, 77:20, 78:6, 78:21, 79:3, 79:14, 80:9, 81:6, 82:6, 83:4, 84:9, 112:2, 121:19 Weigel ^[17] - 4:4, 9:7, 9:11, 63:11, 86:1, 86:9, 86:14, 91:4, 94:8, 95:1, 95:10, 102:16, 103:9, 111:25, 116:8, 120:21, 121:18 weigh ^[3] - 46:8, 47:5, 60:10 weighing ^[2] - 42:2, 93:2 weight ^[1] - 16:20 weighty ^[3] - 32:14, 33:17, 103:16</p>	

writ ^[16] - 47:23, 54:20, 55:8, 55:12, 62:7, 62:10, 62:11, 62:15, 62:25, 71:24, 84:3, 84:7, 84:24, 84:25, 103:4, 109:22 writs ^[2] - 54:13, 72:5 wrote ^[2] - 17:3, 33:1
X
XYZ ^[1] - 65:4
Y
year ^[15] - 70:6, 71:19, 72:2, 72:23, 77:1, 83:22, 84:16, 93:8, 94:7, 113:14, 115:4, 116:11, 117:6, 120:21, 121:9 years ^[7] - 41:23, 71:25, 73:7, 73:9, 84:1, 89:5, 89:7 yesterday ^[1] - 17:13 yield ^[1] - 77:12 yields ^[1] - 64:13 York ^[8] - 1:17, 2:19, 2:22, 48:4, 67:2 yourself ^[1] - 8:3
Z
zero ^[1] - 115:19